No. 89-1671

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CITY OF COLUMBIA and
COLUMBIA OUTDOOR ADVERTISING, INC.,
Petitioners,

v.

OMNI OUTDOOR ADVERTISING, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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JOINT APPENDIX

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DISTRICT COURT'S ORDER DENYING CITY OF COLUMBIA'S MOTION TO DISMISS [PAGES C.A. APP. 41-50]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Civil Action No. 82-2872-0

OMNI OUTDOOR ADVERTISING, INC.,
Plaintiff,

vs.

COLUMBIA OUTDOOR ADVERTISING, INC.,
J. WILLIS CANTEY and the CITY OF COLUMBIA,
Defendants.

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OPINION

[Filed July 11, 1983]

MACMAHON, *District Judge.*

Defendant City of Columbia ("Columbia") moves to dismiss the complaint for failure to state a claim upon

which relief may be granted, *see* Fed.R.Civ.P. 12(b)(6), on the ground that it is exempt from liability under the federal antitrust laws and immune under state law. Plaintiff ("Omni") alleges that defendants have violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-& 2, and state law.

The allegations of the complaint, which we accept as true on this motion to dismiss, are as follows:

Omni is a Georgia corporation engaged in erecting billboards and leasing space on them to advertisers. Defendant Columbia Outdoor Advertising, Inc. ("COA") is a South Carolina corporation engaged in the same business. Defendant J. Willis Cantey, a South Carolina resident, is majority stockholder and chairman of the board of COA. Defendant Columbia is the capitol of South Carolina and a municipal corporation located in Richland County.

Omni entered the Columbia, South Carolina, market in the fall of 1981. COA, then owner of more than 95% of the billboards in that market, conspired with the other defendants to prevent Omni from competing effectively. The alleged overt acts were: (1) defendants caused the zoning commission of Columbia to abdicate to the Columbia City Council its responsibility for regulating the construction of billboards; (2) defendants caused the City Council to pass two ordinances banning the construction of billboards and a third ordinance containing "burdensome standards regulating the construction and erection of billboards;" (3) COA caused Richland County to enact an ordinance containing standards regulating the construction of billboards which has had a detrimental effect on Omni while benefiting COA; (4) defendants have "interfaced with and poisoned" contractual relationships between Omni and other parties by making "false and malicious verbal and/or written reports and statements . . . with the intent of destroying [Omni's] business;" and (5) COA has spread false rumors about Omni's business and charged rates below its cost in order to drive Omni out of the Columbia market.

Defendant Columbia's motion to dismiss should be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957).

I. Federal Antitrust Claims

A.

Defendant Columbia argues that, for the conduct complained of by Omni, it qualifies for the municipal exemption from the federal antitrust laws. A municipality is exempt from liability arising from a municipal ordinance if the ordinance "constitutes the action of the [state] itself in its sovereign capacity . . . or . . . constitutes municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy. . . ." *Community Communications Co.* v. *City of Boulder*, 455 U.S. 40, 52 (1982). As evidence of a "clearly articulated and affirmatively expressed state policy," defendant Columbia points to S.C. Code §§ 5-23-10 *et seq.* & 6-7-10 *et seq.* Plaintiff disagrees.

Fortunately, we are not required to answer the nice question whether the cited sections of the South Carolina Code satisfy the *Boulder* requirements. The complaint in this case simply does not allege that the three ordinances passed by the City Council violated the antitrust laws; rather, it alleges that defendants conspired to violate Sherman Act §§ 1 and 2 and that the ordinances were three of the many overt acts committed in furtherance of the conspiracy. In other words, the evil plaintiff complains of is not the ordinances standing alone but rather the conspiracy. It is within the realm of possibility that evidence upon a trial might show corruption or bad faith anticompetitive actions on the part of city officials, *see*

generally P. Areeda, Antitrust Law § 203.3c (Supp. 1982). We cannot say, therefore, that plaintiff can prove no set of facts in support of its claim of conspiracy that would entitle it to relief. *Conley* v. *Gibson*, *supra*.

In *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389 (1978), the defendants' counterclaim alleged that plaintiff municipalities, which owned and operated electric utility systems, had conspired to violate the antitrust laws. The plaintiffs moved to dismiss the counterclaim on the ground that they were exempt from liability under the federal antitrust laws. The United States Supreme Coure ruled that the cities would be exempt for anticompetitive conduct engaged in "pursuant to state policy to displace competition with regulation or monopoly public service." *Id.* at 413. But the Court remanded the case to the district court for determination whether the cities' actions were directed by the state. There is no reported decision on remand.

Following *City of Lafayette*, in four cases courts refused to dismiss claims that cities had conspired to violate the antitrust laws. *See Whitworth* v. *Perkins*, 559 F.2d 378, 379 (5th Cir. 1977), *vacated for reconsideration in light of City of Lafayette* [*supra*], 435 U.S. 922, *reinstated*, 576 F.2d 696 (5th Cir. 1978), *cert. denied sub nom. City of Impact* v. *Whitworth*, 440 U.S. 911 (1979); *Schliessle* v. *Stephens*, 525 F. Supp. 763, 776 (N.D. Ill. 1981); *Stauffer* v. *Town of Grand Lake*, [1981-1] Trade Cas. ¶ 64,029 at 76,330 (D. Colo. 1980); *Cedar-Riverside Associates, Inc.* v. *United States*, 459 F. Supp. 1290, 1299 (D. Minn. 1978), *aff'd on other grounds sub nom. Cedar-Riverside Associates, Inc.* v. *City of Minneapolis*, 606 F.2d 254 (8th Cir. 1979). Moreover, in two of these cases, the courts reached this result after explicitly ruling that the cities' alleged actions, standing alone, were exempt from the antitrust laws. Thus, these two courts explicitly recognized the distinction between an allegation that a city's action violated the antitrust laws and an

allegation that a city conspired to violate the antitrust laws. *See Stauffer* v. *Town of Grand Lake*, *supra*, [1981-1] Trade Cas. at 76,328-30; *Cedar-Riverside Associates, Inc.* v. *United States*, *supra*, 459 F. Supp. at 1298. In only one case was a motion to dismiss such a claim granted, *see Crocker* v. *Padnos*, 483 F. Supp. 229, 232 (D. Mass. 1980), and in that case it appears that the court simply overlooked the distinction.

We have no doubt that the better result is to deny a motion to dismiss when the arguably exempt actions of the municipality do not stand alone but are only some of the overt acts of an alleged conspiracy. Simply put, the plaintiff is entitled to an opportunity to prove the alleged conspiracy.

B.

Defendant Columbia also makes the novel argument that municipalities, when acting "in areas involving substantial governmental interests and goals," are immune from liability under the federal antitrust laws by vitrue of the tenth amendment to the United States Constitution, citing *National League of Cities* v. *Usery*, 426 U.S. 833 (1976). We reject this argument. The law is

> "in order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* must satisfy *each* of three requirements. First, there must be a showing that the challenged statute regulates the 'States as States.' . . . Second, the federal regulation must address matters that are indisputably 'attribute[s] of state sovereignty.' . . . And third, it must be apparent that the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional governmental functions.'"

Hodel v. *Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 287-88 (1981). The Sherman Act meets none of these requirements.

II. State Claims

Plaintiff makes the following claims under state law: Count III, violation of S.C. Code § 39-3-130 (agreement in restraint of trade illegal); Count IV, violation of § 39-3-120 (monopolies illegal); Count V, violation of § 39-3-10 (anticompetitive combinations illegal); Count VI, tortious interference with and destruction of plaintiff's business (no statute cited); Count VII, destruction of plaintiff's business reputation and goodwill (no statute cited); and Count VIII, unlawful interference and unfair competition with plaintiff's business (no statute cited).

Defendant Columbia makes two arguments in support of its motion to dismiss the state law claims. Its first argument is that it is immune from liability for torts; plaintiff does not meet this argument in its opposing memorandum. Our research indicates that municipalities in South Carolina are immune from all tort claims except those for which the legislature has specifically waived sovereign immunity. *See Belue* v. *City of Spartanburg*, 276 S.C. 381, 280 S.E.2d 49 (1981); *Furr* v. *City of Rock Hill*, 235 S.C. 44, 109 S.E.2d 697, 698 (1959). Plaintiff has not called to our attention, nor have we found, any statute which waives the sovereign immunity of municipalities for the torts plaintiff alleges in Counts VI through VIII. These counts, therefore, must be dismissed.

Defendant Columbia also argues that it is shielded from liability under the state antitrust laws by S.C. Code § 39-5-40, which provides:

> "Section 39-5-40. *Article inapplicable to certain practices and transactions.*
>
> Nothing in this article shall apply to:
>
> (a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

> (b) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service.
>
> (c) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 55, Sections 38-55-10 through 38-55-410.
>
> (d) Any challenged practices that are subject to, and comply with, statutes administered by the Federal Trade Commission and the rules, regulations and decisions interpreting such statutes.
>
> For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption."

Defendant Columbia has not seen fit to tell us or Omni whether it claims exemption under subsection (a) or (d) or both. Omni asserts in response that defendant Columbia has not met the burden of proving exemption, and, focusing on subsection (a), that there is no such regulatory body or officer involved with the statutes relevant here.

It is clear that the acts of defendant Columbia alleged in the complaint are not exempt under either subsection (a) or (d). In *Bostick Oil Co.* v. *Michelin Tire Corp., Commercial Division*, 702 F.2d 1207 (4th Cir. 1983), the Fourth Circuit Court of Appeals held, as to subsection (a), that the defendant's actions were not exempt merely because the defendant asserted that "its conduct in a particular case might not be illegal" under the federal antitrust laws. *Id.* at 1220. As to subsection (d), the court reasoned that if the claim against the defendant

were not exempted by subsection (a), which applies to actions "permitted" by other law, it would not be exempted by the narrower subsection (d), which applies to actions complying with statutes administered by the Federal Trade Commission. *Id.* at 1219 n.24. Following *Bostick*, we must reject defendant Columbia's argument that the actions in the complaint are exempt under § 39-5-40.

Accordingly, defendant Columbia's motion to dismiss is granted as to Counts VI, VII and VIII, and denied in all other respects. The Clerk of the court is directed to enter judgment dismissing Counts VI, VII and VIII of the complaint as to defendant Columbia.

So ordered.

Dated: New York, N. Y.

July 8, 1983

/s/ Lloyd F. MacMahon
LLOYD F. MACMAHON*
United States District Judge

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* Of the United States District Court for the Southern District of New York, sitting by designation.

EXCERPT FROM OPENING STATEMENT OF MR. HEYWARD McDONALD [PAGE C.A. APP. 145]

* * * *

The burden of proof, as his Honor has explained to you, is on them, is on them. They are going to try to prove first that Columbia Outdoor, and the City conspired to pass the moratorium and the ordinance against them as though Columbia Outdoor could direct and control Mayor Finlay, Patton Adams, Bill Ouzts, Paul Bennett, Rudy Barnes, and I know they will be very interested to find out that Omni thinks that a local company can control them and their votes on behalf of the citizens of Columbia, South Carolina. We will show that Omni

* * * *

OPENING STATEMENT OF MR. JIM MEGGS [PAGES C.A. APP. 153, 155]

* * * *

In doing so and in proving that contention, it becomes the burden of Omni Outdoor Advertising to prove that conspiracy to you. They must prove a fact situation which draws you to the inescapable conclusion that there must have been an agreement between this five counsel members and the principals in Columbia Outdoor Advertising. That I am sure will not be done in this litigation.

* * * *

I am satisfied that you will find that there was no conspiracy; that the City Council did in fact consider the public interest and passed a measure finally that was indeed enacted solely for the purpose of protecting the public of the City of Columbia.

* * * *

EXCERPTS FROM TESTIMONY OF WILLIAM B. HARKINS [PAGES C.A. APP. 156, 167, 169, 182-185, 187, 198-200, 213, 224-225]

* * * *

Q Mr. Harkins, give us your full name?
A My full name is William B. Harkins.
Q Where do you live?
A I live at 2012 Edge Drive, North Myrtle Beach, South Carolina.
Q How long have you lived there?
A I have been there four years.
Q Before that where were you?
A I was in Indianapolis, Indiana.
Q What did you do in Indianapolis?
A In Indianapolis I was president of Naegele. N-A-E-G-E-L-E. I was president for four years of Naegele Outdoor Advertising Company prior to coming to Myrtle Beach and with Omni.

* * * *

No other medium is as low in cost per thousand or cost for advertising as outdoor advertising. It makes the small advertiser look as big as the national advertiser. For instance when a small advertiser buys a poster board or painted bulletin, as you see here, he is just as big as the national advertiser. That is why local advertisers like to use outdoor advertising, because it makes them look as big as the biggest advertiser.

* * * *

Q This factor of uniqueness you talk about, how important is that during the political season?
A Well, as you know politicians are the first to buy outdoor advertising and it is—We are pressured, as a matter of fact, all outdoor plants are pressured by politicians to get their boards up. They want to get elected. They understand the effectiveness of outdoor advertising. You must have the distribution to handle your local advertisers, your regional advertisers, your national ad-

vertisers and politicians as they come in and out from time to time.

• • • •

Q So we have the zoning, I think you said, Mr. Harkins, where you have a pole on one side of the street and then you couldn't put another one for so many feet; is that correct?

A That is correct.

Q That is one type, is that right?

A That is correct, sir.

• • • •

Q That is called one side of the street spacing; is that correct?

A Spacing. It is referred to in most ordinances around the country as spacing.

Q Then I suppose there is another kind. If you had the same street where you put a sign here, where you have spacing on this side, is that correct?

A That is correct.

Q And also they would consider you would have to be so many feet on the other side, too?

A That is correct.

Q That would be double side spacing?

A That's correct. It is usually on either side of the highway.

Q So you would have to have so much spacing from here on this side, too?

A That's correct.

Q These type, too, are the normal type you run into around the country?

A Yes, along with others.

Q Then, I believe, you have a spacing where or a type of zoning where they come in and say this is a housing area and they won't let you build any signs?

A A protectionist area or an area not zoned for outdoor advertising. Outdoor advertising is usually on commercial or industrial property. Naturally we wouldn't want to go into residential areas. So by zoning we are

only allowed in a residential area. You are only allowed in industrial and commercial.

Q So there is excluded areas?

A That's correct.

Q Excluded areas?

A That's correct.

Q Then there is a type called radial zoning; is that correct?

A Yes, sir, radius zoning.

Q What does that mean?

A That takes the sign location and draws a circle or a radius.

Q We couldn't have any signs anywhere in here?

A That is correct.

Q That might mean you have a sign on this street, and over here you couldn't have one even though you couldn't see one from the other?

A That's correct.

Q And this is a very restrictive type zoning?

A Very.

Q What?

A Yes, sir.

Q Is it rare?

A Yes, sir.

Q What is the usual purpose of this radial type zoning?

A To stop the nesting or gate, one sign across the other, or back from a residential area or a park or historic site.

Q Like they would say this is a historic site, you couldn't have a zone in so many feet?

A Nor would we want to, that's correct.

Q Then there is a final type zoning you find, what type is that?

A I guess you are referring to amortization.

Q Amortization. What is amortization zoning?

A Amortization zoning is where you are given a length of time to amortize your outdoor advertising structures

and then have to take them down. That can be from—I heard it from two years to five years to ten years. It is a way of having your signs taken down over a period of time, amortization.

Q So if a city, for example on exhibit five, if they didn't like these type structures—

A They could amortize it.

Q They could say you could leave them up for so many years and then you have to take them down?

A That is correct, sir.

* * * *

Q Mr. Harkins, you know Columbia, Lexington, what is the key to the Columbia market?

A The key to the Columbia market again is the core area, and those arteries adjacent that lead in and out of the core area. That is paramount as well as all of the market available. That is the primary.

Q You got Lexington County over here?

A Yes, sir.

Q You got Richland County around here?

A Right.

Q The key to this whole distribution and whole concept of a plant is to have a distribution that centers itself on the core?

A The core and act like a wagon wheel.

* * * *

A Mayor Finlay said in an interview on the radio that, "Everything was fine until Omni came to town." Verbatim, "Everything was fine until Omni came to town." I will never forget it.

Q Did you ever go to any meetings?

A Yes, sir, I did. I was at a meeting on a couple of occasions. Mayor Finlay asked some representatives from Omni Outdoor to stand up. We were at a council meeting. Mr. Stuckey, the gentlemen I mentioned earlier, was acting manager of the plant, stood up. I have never seen at a council meeting and I have been to many a one, a

taxpayer and a businessman take the kind of rough abuse that Mr. Stuckey took from Mayor Finlay about Omni Outdoor being in town.

I can quote him as to what he said that night. He asked Mr. Stuckey were we going to build another big sign like this painted bulletin that was located at the Town House, any more of those big ugly signs in town. Again, as I couldn't believe what I heard on the radio, I couldn't believe what he said in the council meeting. That is for the record. Mr. Stuckey was standing up as in the dock. I am reminded that Columbia Outdoor was present and so was Minnessota Mining, another sign company here. None of those representatives were ever singled out or asked a question.

* * * *

A Mr. Gray Olive. Mr. Stuckey and I.

Q Who is Mr. Gray Olive?

A I guess his title is City Manager.

Q City of Columbia Manager?

A City Manager of Columbia. He called and asked us to come for a meeting. I remember we asked him at the time would Columbia Outdoor be there, would they be there?

A He said, "No, this just a meeting with you all. We are working on the ordinance. We want to work out some things with you folks." We went up there on good intention.

Q What was that meeting like?

A We were sat down and we were told here is how it is going to be. That was about the substance of it. He asked me personally what we thought of amortization and some other things, basically, and after that he said this how it is going to be. I never had gone to a meeting like that. I don't know why we had the meeting. As a matter of fact, I told him that.

I said, "Why did you ask us here to talk about negotiating an ordinance, and there is no negotiating. We are being told what to do and how it is going to be?" It

was a very rough and abrupt meeting. I was simply told how the ordinance was going to be. I was with Mr. Stuckey at that particular meeting.

• • • •

A I think I mentioned it earlier, it was a good zoning environment. The spacing was very good. There were no real zoning problems per se. I would overall say it was a well zoned market for outdoor advertising.

• • • •

Q Go ahead and characterize that in your own words. What happened at that meeting when Mayor Finlay was talking to Mr. Stuckey?

A Well, again I thought it was the roughest confrontation I ever seen at a council meeting. It was as much arrogance as I ever seen displayed at a meeting. I am a quiet person myself. I was almost at a point of getting up and saying something myself to defend this man who was being put in the dock. Again, it was almost a vehement attack.

Q What was your feeling with reference to the input of Omni to that meeting?

A None.

• • • •

A I will be honest. I don't get that way often. I had a real pit in my stomach. I never seen it any rougher. I saw the handwriting on the wall.

Q When you had a meeting with Mr. Olive, what was your feeling with reference to the input you could have at that time meeting?

A Absolutely none. The handwriting on the wall, iced out, dead.

• • • •

EXCERPTS FROM TESTIMONY OF ROBERT T. MORGAN [PAGES C.A. APP. 282, 297-300]

• • • •

Q Can you give us your name, please?
A Robert T. Morgan.
Q Where did you live, Mr. Morgan?
A Atlanta, Georgia.
Q What do you do in Atlanta, Georgia?
A I am an attorney.

• • • •

Q What did Mr. Bates say? Who is Mr. Bates?

A I was told Mr. Bates was the city attorney and present at the meeting. I had in my discussions, I think with Mr. Selmon, got the impression that there was going to be a new moratorium because they felt the old one was going to be unconstitutional.

Q When you were talking to him prior to July 21, 1982, you say you got the impression what?

A I got the impression they realized their first moratorium had some Constitutional problems and probably would be struck down, in that they were going to try and pass a new moratorium as quickly as possible to take a more Constitutional moratorium without the Constitutional problems of the previous one. That is why I came to the City Council to try and convince them they should pass an ordinance that should be a reasonable ordinance rather than a flat moratorium.

Q When you handed the document, the exhibit just introduced, to Mr. Bates, what did he say?

A He read it and then I think he basically chuckled and said you can't sue the city. That was the extent of my conversation.

Q What kind of reception did you get from Mr. Bates?

A It was pretty hostile.

• • • •

Q Again, you wrote these two to Mr. Bates and looking at Exhibit 15, was that the ordinance stipulated to and given first reading at the meeting?

A That's correct.

Q What does that ordinance say?

A Shall I just read the actual controlling language?

Q Yes, sir.

A "It shall be unlawful hereafter for any person to erect within the City of Columbia any billboard or sign for off premises commercial advertising.

Q Was there already a moratorium in effect at that time?

A That is correct.

Q When were you supposed to have your hearing on the old moratorium in the court?

A Approximately two days.

Q Afterwards?

A Afterwards.

Q Indeed, did you have that hearing two days afterwards?

A Approximately, yes, sir.

Q What was the result of the hearing?

A It was declared—The original moratorium was declared unconstitutional.

Q So in effect, they had covered that by passing a new ordinance two days earlier?

A Right. It was my impression they anticipated that was going to happen.

• • • •

EXCERPTS FROM TESTIMONY OF SCOTT McKINLEY [PAGES C.A. APP. 345, 353-357]

A Scott McKinley.

Q Where are you from, Mr. McKinley?

A I live in Baton Rouge, Louisiana.

Q What do you do in Baton Rouge?

A I am president of McKinley Outdoor Advertising.

• • • •

A The meeting was to get together to discuss the moratorium that the city had put in a week earlier, and the possibility of a new ordinance.

Q Would you go ahead and—Who was at the meeting?

A Myself, Bob Bostic, Willis Cantey, Cantey Heath, I believe Jim Cantey and with the city was Terry Floyd.

Q What happened at the meeting?

A Basically we had sat down and Terry Floyd had suggested that the new spacing law should be 750 feet. Our contention was it should be 500 feet and just keep in accordance with the Federal regulations and laws.

It was a cordial meeting until towards the end of it where Willis Cantey seemed to get very irate and upset. He said that they didn't have any problems with the city until we came into the market; that he warned us not to come into the market but we came anyway. Now, the roof was caving in on us and it was our fault. That he wanted 1,000 foot spacing and was going to go to the City Council to get it.

• • • •

A We put up an inflatable eagle that is made out of a very thick vinyl. It has a blower behind it that keeps it inflated. It comes out from the face of the board. It had a 50 foot wing span. We put it up. The copy line was Columbia, Your Progress Is Soaring. It was a public service. We took the expense to ourselves to put it up and try to get along with the city and introduce ourselves to the city.

Q Was there any comments to you or at any City Council about that?

A Yes. We got phone calls that was going to have to be taken down.

Q Why?

A We found out at the City Council meeting—Let me go over how the meeting went. I went to the City Council meeting and there was an obscure part of the ordinance that dealt with signs that had moving objects on it. They were claiming, which may have been true, that when the wind hit the wings, they would raise slightly because they were tied down and bolted down. They would raise slightly. They read part of the ordinance off.

It was our turn to speak in defense. When it was our turn to speak, Mayor Finlay was very upset and irate. Stood up, pointed his finger at us and told us we would be taking down the eagle because we did not ask his permission to use the name "City of Columbia."

Q Subsequent to that, did you take the eagle down?

A Yes, we did.

Q Did you try to speak out or get a chance to give your story?

A No, I did not get the chance.

Q Excuse me?

A No, I did not. No.

Q Did anybody with Omni get the chance?

A I don't believe anybody did.

Q What was the atmosphere at that meeting?

A Very hostile. He seemed to have taken it personally that we had put the eagle up.

• • • •

EXCERPTS FROM TESTIMONY OF DAVE MERRY
[PAGES C.A. APP. 384-385, 389-391, 393-394]

• • • •

Q Would you give us your name please?

A Dave Merry, M-E-R-R-Y.

Q Where did you live?

A 5145 Lake Shore Drive, Columbia, South Carolina.

Q What did you do?

A I am a lawyer in the firm of Merry and Higgins in Columbia.

• • • •

Q Let's talk about before the order that you had from Judge Cureton, did you talk with them about the lawsuit?

A Yes, sir. I talked with them about the merits of the lawsuit.

Q What did they tell you?

A Well, basically their position was—I think they had informed City Council that the form in which they had passed the moratorium was in all likelihood unconstitutional and subject to attack. They reiterated that to me. We were trying to compromise, trying to reach some sort of a spacing.

Q Would you go over that again, I am not sure I understood it. They reiterated what?

A They reiterated to me that they did not have much faith in their ability to defend my lawsuit. By the time we could do anything about it they would have in effect the new ordinances which was going through the process. By the time we could get an order from the Judge declaring the moratorium unconstitutional, they would have the new act in place so they weren't very willing to negotiate.

Q How would you characterize that?

A Well, Mr. Bates and Mr. Meggs are very good advocates for the city and they do what the city tells them to. I think they informed the city they passed an ordinance that was unconstitutional and the city told them

to defend it the best they could until they got the new act up, I assume. That is what occurred.

Q That was for purposes of delay?

A Certainly. That is what I was informed.

Q Who informed you of that?

A Someone in the city attorney's office. It would have been Mr. Meggs or Mr. Bates.

Q. One of the two here?

* * * *

Q After you got the order, what happened with refence to the City of Columbia?

A After we got this ordinance—This order basically allowed Omni to go back and put up the signs they had been stopped from putting up.

Because of some technicality with regard to, I believe, one of the locations and also with regard to, I believe, their interpretation of the new ordinance which was passed as soon as the order was issued by Judge Cureton, within a very short period of time the city put into place a new ordinance. We were threatened if we attempted to put up some billboards that our people would be arrested on the site by city policeman. It caused a great deal of concern to my clients.

* * * *

A I believe I did. I went to the meeting that I heard Mr. McKinley testifying to earlier, and I am not sure if it was the same one Jimmy was at or not, it may have been. I was at the meeting and representing my client at the meeting. As a matter of fact, I was before the council at the time Mayor Finlay took it upon himself to chastise and berate the people at Omni. He really took quite a time to express his views on their coming into the city and putting up billboards in the city. It was an emotionally charged moment. He was quite vociferous and very adamant in his comments. I was embarrassed for my clients and Mayor Finlay quite frankly.

Q Did he jump on anybody else?

A No, sir.

Q How would you describe the atmosphere there at that time?

A It went beyond the bounds of what I have ever seen at a City Council meeting. I never seen the Mayor get up and literally address somebody down, even if you are opposed to somebody. It was a very emotionally charged atmosphere. More so than I ever seen at a council meeting over something like a building permit.

* * * *

EXCERPTS FROM DEPOSITION OF J. WILLIS CANTEY (8/23/83) [PAGES C.A. APP. 451, 548-549]

* * * *

Q Give me your full name please.
A J. Willis Cantey.
Q Where do you live?
A 1400 Westminister Drive, Columbia.
Q How old are you, Mr. Cantley?
A Sixty-six.
Q What do you do at this time? What job do you have?
A I'm retired.

* * * *

Q Do you remember this letter that you wrote Mr. Naegele?
A Yes.
Q Mark that.

PLAINTIFF'S EXHIBIT NUMBER NINE MARKED FOR IDENTIFICATION

Q Do you remember writing this to Mr. Naegele?
A Yes.
Q It says in here the mayor of Columbia and the four councilmen are very good friends of ours. I discussed your suggestion with the mayor about reworking our existing sign ordinances and he promptly said no problem. My son Jim has begun a study to determine exactly what restrictive measures we should request. Is that true?
A Sure.
Q Do you know the date of this letter is December 16, 1980?
A No, I didn't know that. Okay.
Q So contrary to what you earlier testified to back in December 16, 1980, you are going to get from your friends a sign ordinance that you want?
A Mr. Lewis, Mr. Dooner wasn't even in—

Q Is that what it says?
A Yes. He wasn't even in this market.
Q No, sir. I asked you when you first got involved with sign ordinances in Columbia and you told me it was 1981 or '82 and you're back as far as 1980, you are in here getting an ordinance for your own benefit?
A You know why I did that? To keep Mr. Naegele out. He was buying everything, Greensville, Spartanburg, Gastonia, Greensboro, Ashville, right all over me. Dooner wasn't even in it.

* * * *

EXCERPTS FROM TESTIMONY OF WILLIAM J. DOONER [PAGES C.A. APP 603-604, 664, 675]

* * * *

Q Give us your name, please?
A William J. Dooner.
Q Where do you live?
A In Atlanta, Georgia.
Q What do you do?
A I am in the outdoor advertising business. A shareholder in a number of companies, and, of course, other business interests as well.
Q Are you one of the shareholders or the main shareholder of Omni Outdoor Advertising in Columbia?
A I am approximately 65 percent owner.

* * * *

He shocked me with his last comments before as we left the Ionosphere Room and outside the Ionosphere Room before he went—Opposite the room it was one of the gates in the new terminal in Atlanta and the man looked me right in the eye and smiled and said, "Do you think I should talk to my good friend, the Mayor, and get 1,000 foot spacing?" As God is my judge, may I never see tomorrow if he didn't say it.

* * * *

A Mr. Cantey had told me I can't cash flow or make any money on 98 panels and seven bulletins. On December 31, 1981, we had 78 poster panels and seven painted bulletins. We had a number of leases and permits that were in process and construction continued up to the moritorium time. Some of the structures were built in the county, so that number grew from 78 to 98.

He said to me and rightfully so, that we could not cash flow a business. Meaning we would not be able to make a profit from 98. It is like building a 60 room hotel when you need 150 to break even. He knew it, and

the moratorium passed and a severe ordinance was coming in.

* * * *

EXCERPTS FROM TESTIMONY OF RICHARD STUCKEY [PAGES C.A. APP. 825, 921-923, 1007]

Q Give us your name, please?
A Richard Stuckey.

* * * *

A I was with Omni Outdoor Advertising.

* * * *

Q What does Plaintiff's Exhibit 77 show?
A It shows what we would call a case of double billing.
Q Whose invoices are those?
A Those are Columbia Outdoor Advertising invoices.
Q What do they show?
A They show what we would call double billing.
Q What is that?
A Double billing would be charging, selling the same board twice. In other words, once to one client and once to another client for the same time period.
Q What does that do?
A What that does is take certain key locations and make them, make one board into two. Usually it is done by covering up clients who have long term contracts and who are not located in the city, so they don't ride by their billboards daily. It takes a crown jewel and makes it two crown jewel locations.
Q In that case what does that exhibit show?
A It shows that Phillip Morris was billed for a board on Gervais Street.
Q What location was that?
A That is 2400 Gervais Street panel number two, and that Morris Shue, Richway, was billed for the same board at 2400 Gervais Street, panel two.
Q And Phillip Morris is what you would call what kind of advertiser?
A Cigarette advertiser, tobacco company.
Q Is it national?
A Yes, sir.

Q What kind is the other advertiser, Richway?
A That is a local advertiser.
Q I show you this set of documents, could you identify those?
A Yes, sir, I can.
Q What are those?
A Two Columbia Outdoor Advertising invoices and two location lists.
MR. McDONALD: No objection.
MR. MEGGS: No objection, your Honor.
THE COURT: Admitted.

(Plaintiff's Exhibit 78 received in evidence).

Q Looking at Plaintiff's Exhibit 78, what does it show?
A It shows two Columbia Outdoor Advertising invoices. One to Brown and Williamson Tobacco Company, the other to Midland Trane Company of Columbia whereby Brown and Williamson was billed for a location at Two Notch at Val Vista. Number 4 and Midland Trane was billed for the same location, Two Notch and Val Vista number 4.
Q For the same time period?
A Overlapping time periods.
Q What is Brown and Williamson, what kind of advertiser?
A It is a tobacco company.
Q Is it national?
A Yes, sir.
Q What is the other advertiser, Midland Trane?
A Midland Trane would be a local advertiser.

* * * *

Q Now, you said that you recommended to Mr. Bennett a 500 foot ordinance and he replied that will never fly?
A That's right.
Q Are you sure of that?
A Yes, sir. He said City Council would never accept it.

* * * *

EXCERPTS FROM TESTIMONY OF SUZANNE FLOWERS [PAGES C.A. APP. 1064-1065, 1069-1073]

• • • •

Q Would you give us your name, please?
A Suzanne Flowers.
Q And where did you live?
A I live at 902 North Lucus Street
Q Here in Columbia?
A West Columbia.

• • • •

Q Before that, what did you do?
A Before that I worked with Omni Outdoor Advertising here in Columbia.

• • • •

Q Explain this picture, what happened?
A Do you want me to start from the beginning?
Q Explain the whole thing. What about that picture?
A Columbia Outdoor and I were both calling on Intertec Data System trying to sell them a billboard showing for Christmas.
Q What year was that?
A This was '83?

• • • •

Q What were you looking at while you were riding around?
A We were looking at billboard locations.
Q What billboard locations were you looking at?
A We were looking at all billboard locations. The locations I had chosen for this particular showing.
Q Were you looking at locations that other people had mentioned?
A Yes.
Q And whose locations were those?
A Columbia Outdoor's locations.
Q Go ahead.

A Anyway, I ended up losing the business. They ended up buying from Columbia Outdoor. As Rich Stuckey and I were riding down Two Notch Road, we stopped and took this picture. We noticed that Intertec was covering up an R. J. Reynolds or Winston board, and this happens to be one of the boards that he told me that Columbia Outdoor told him he could have.

• • • •

Q Was this location that you were looking at, is this a location of Columbia Outdoor?
A Yes.
Q Was that one of the locations you looked at when you were riding along with Mr. Wells?
A Yes.
Q Go ahead?
A We took the picture. I know that RJR buys their billboards for a year at a time and this wasn't right.
Q Why do you say that wasn't right?
A Because they were covering up an advertiser that buys a board for a year at a time with another advertiser, a local advertiser that only buys for one month.
Q What happened after that?
A After that—Oh, I believe, it was either the next week or two after that was posted the RJR representative came to visit Columbia.
Q What do you mean the RJR representative?
A He comes once in a while to ride his billboards to make sure they look okay and they are where they are supposed to be.
Q Was he coming to see you?
A He was coming to see Omni, and also Columbia Outdoor. He sees us both at the same time.
Q Had he given you prior notice he was coming?
A Yes.
Q What happened with reference to this board?
A Well, right before he came into town Winston was put back up on the board.

Q Did you see that?
A Yes.
Q Now, what happened at the bus station with reference to your paper, I believe you call it?
A Yes.
Q Explain what paper is?
A Paper is what we use to put up the billboard. It is what the client, the production, what the ad actually says. This paper comes by bus, Grayhound to us from the poster company that makes the paper. Columbia Outdoor and Omni both receive their paper at the same bus station. There has been many occasions where Columbia Outdoor has picked up my paper from the bus station in error.
Q What advantage does that give them?

• • • •

Q What advantage did that give them in picking up your paper?
A A couple of advantages is they could see what clients that I had sold to because it had it written on the front of the package for one thing. They could see how many posters I ordered. They could also hold the paper so that I couldn't get my billboards up on time.
Q Was that a problem?
A Yes.

• • • •

EXCERPTS FROM TESTIMONY OF BOB BOSTIC
[PAGE C.A. APP. 1082]

• • • •

Q What happened with reference to that eagle?
A It caused quite a stir, particularly in the city offices.
Q What happened, did anybody say anything to you about it?
A The Mayor got quite upset.
Q When was that, do you remember; was that at a meeting?
A It was a City Council meeting.
Q What happened?
A I attended the City Council meeting and the Mayor was quite irate about the situation. He called the billboard an atrocity. He wanted to know who gave us permission to put it up. When I told him what had transpired, that I had gone to the Chamber of Commerce, he said that he didn't give us permission and if he didn't give us permission he was going to see to it that it was taken down.
Q Was he mad?
A Yes he was very irate.

• • • •

EXCERPTS FROM DEPOSITION OF J. WILLIS CANTEY (8/30/85) [PAGES C.A. APP. 1145, 1179-1180, 1192]

• • • •

J. Willis Cantey, being duly sworn, testified as follows:

• • • •

Q Yes, sir. If you, Mr. Cantey, if you could use a very good location twice for the support of bad locations, that would be very advantageous to you; wouldn't it?

A I would—on paper, I would think it would. We don't do business that way.

Q I understand. But that would as a matter of—if that happened, that would be very advantageous to you; wouldn't it?

A Well, it would just be like stealing, that's what it would amount to.

Q And you couldn't—

A We don't do it, that's all.

Q I understand that. And it would give you a very big edge over your competitor; wouldn't it? It would give you an extra good location; wouldn't it?

• • • •

A Yes, it would

• • • •

Q So there should be a corrected invoice for this one if it's not true?

A I would think all of them would be the same way.

Q So if we say that there are no corrected invoices, what do we say for that, Mr. Cantey?

A I don't know whether there were any or not, but I say I assume that there could be.

Q But if there weren't any?

A This is a hell of a damaging thing you are talking about.

• • • •

EXCERPTS FROM TESTIMONY OF WILLIAM J. DOONER [PAGES C.A. APP. 1228, 1256]

• • • •

WILLIAM J. DOONER, PREVIOUSLY SWORN, RESUMED THE STAND. REDIRECT EXAMINATION BY MR. LEWIS:

• • • •

Q Mr. Dooner, it is your testimony as I interpret that answer, when the Mayor's voice appeared on the radio all of a sudden it stopped all the digging, all the steel working, it just stopped cold in your tracks?

A Absolutely. We had men arrested even by the City.

Q When he got on the radio and said something about we got too many billboards, all of a sudden everybody quit working?

A Sure. ODI didn't want to come into town. Their men were thrown in jail. Mr. Leo Rolland, the contractor for Holland Outdoors was thrown in jail. Constant harassment every time we would dig a hole by the city coming out, building inspectors red tagging us, put a hold on the board.

• • • •

EXCERPTS FROM OMNI'S SUMMARY OF EVIDENCE OF CONSPIRACY [PAGES C.A. APP. 1343-1348]

* * * *

MR. LEWIS: As to the conspiracy. One, there is testimony in the record about the atmosphere at the meetings they all went to. How it was closed and no real substance but just in a perfunctory type meeting with no real ability to make input.

Two, there is plenty of evidence in the record about how Mayor Finlay was picking on Omni and how he was abusive to them and embarrassing, and harsh and harassing to them.

There is evidence in the record of harassment of the City even after the ordinance was found unconstitutional as to their ability to go forward with the building of the permits.

The mere fact that the permits themselves had been held up and not allowed to be built on by the City because of the moratorium which six months later was found to be unconstitutional, and thereafter the City taking the position that the time had run on the permits and you couldn't build them is a very clear indication of what was in the city's heart, because that is about as abusive of the process as anything you could ever imagine.

There is the fact of the discounted boards which we have gone over.

There is specially an important letter in the file, and I believe it's in December of 1981. —Might be December 1980. It is a letter to Mr. Naegele and it talks about how Mr. Cantey is going to get an ordinance passed and this is very important because under cross-examination and it was in the record through his deposition, I asked, I said,

"Q. No, sir, I asked you when you first got involved with sign ordinances in Columbia, and you told me it was in 1981 or '82. And you're back as far as 1980. You are in here getting an ordinance for your own benefit."

His answer, "You know why I did that. To keep Naegele out."

So we have the fact that indeed there was a plan and a utilization of Columbia Outdoors as far back as 1980 to keep people out of the market through their passages of ordinances.

We have the ordinance itself. I think this is something totally overlooked.

THE COURT: That's the moratorium?

MR. LEWIS: The moratorium and ordinances, yes, sir. You could not have devised a plan more beneficial to COA and more detrimental to Columbia Outdoor (sic) if you had sat down and what we say they did, mapped it out. All you have to do is look at the particular documents and you will see this ordinance is a tailor made ordinance for COA.

THE COURT: Next item of evidence, if you will.

MR. LEWIS: The next item of evidence is the timing. You will find that the timing of this thing was—

THE COURT: Timing of what?

MR. LEWIS: The moratorium. The moratorium is key to the timing because it was March 24. You will find the day before the moratorium Mr. Willis Cantey is over there. You will find through the permits—

THE COURT: Over where?

MR. LEWIS: To see Mr. Finlay. He went to see him the day before the moratorium was passed. You will find their building program was over for the City at that time. They went to a very big building program and ended it at that time. Of course, our inference is he went over to the Mayor to pat him on the back and say we are finished, now pass the ordinance.

THE COURT: Next.

MR. LEWIS: You find memos. There are memos in the file where Mayor Finlay is holding the ordinance up so he can review it and make sure that it is okay. Then in that connection you look at the ordinance itself and every development on the proposed ordinances favored

COA. In other words, some suggestions prior that COA were against and each of the suggestions were changed to do what COA and themselves wanted. You have a history of what the ordinance went through and you will find whatever COA wanted, the ordinance ended up to be as they wished.

THE COURT: Next.

MR. LEWIS: You will find there was an airport conversation where Mr. Cantey said that he would get 1,000 foot spacing and indeed he did get 1,000 foot spacing.

One of the big things you will find in the record, and you will find that Mr. Cantey, prior to the moratorium and during the late 1981 and early 1982, he went all around the country and there were plans given to him by Neagele, by Lamar on how to stop Omni. The plans themselves say get a moratorium and get an ordinance passed fast, right away.

THE COURT: If you will, help me recall the evidence that specifically states this is how you can stop Omni.

MR. LEWIS: The evidence would be a memo dated 11/3/81, a Pensacola trip. Get your own ordinance. 500 foot spacing. Get city ordinance.

There is a memo dated 12/11/81, the conversation with Jerry Marchant.

THE COURT: The conversation between who and Jerry Marchant?

MR. LEWIS: Mr. Willis Cantey. The other one was between Mr. Cantey and someone with Lamar in Pensacola.

THE COURT: Do they mention Omni?

MR. LEWIS: They don't mention Omni. He went down there to find out about Omni and this was what they told him how to stop Omni. In other words, this is what they told him to do to stop Omni from coming into Columbia.

THE COURT: Is that your language, or their language, how to stop Omni? Is this Mr. Lewis' advocacy?

MR. LEWIS: He went down there about Omni. There is no question about that.

THE COURT: Can you quote anybody about saying this is how you can stop Omni?

MR. LEWIS: I can't say that was in the memorandum, but he was down there about what to do with Omni and it is there in those memorandums in speaking about Omni it says get your own ordinance. Get city ordinances.

In the memo dated 12/11/81 in a visit, put in spacing 500 feet now, consider moratorium.

There was a meeting in Spartanburg where he went up to see Naegele about Omni. It says put in sign ordinances as quick as possible, 1,000 feet.

There is a memo of 1/5/82. Another conversation with Jerry Marchant. Put in sign ordinances as quick as possible.

So that we have Mr. Cantey talking to all these people about Omni around the country and going and visiting them. He gets a plan. The plan is clear from these that I just quoted to you. Get a moratorium, put in an ordinance. Indeed that is what happened.

Another important thing is when the moratorium was proposed in March of 1982, Mr. Bates advised council that it was an unconstitutional ordinance.

Mr. Merry was told by Mr. Bates or Mr. Meggs they said they were going ahead anyway and pass it because by the time we got it through court they would have their ordinance passed and it wouldn't make any difference any way.

This shows a state of mind, a protectionist type attitude, when they are advised it is unconstitutional, and indeed that moratorium was found to be unconstitutional.

THE COURT: All right. Next item.

MR. LEWIS: There was, during June of 1982, I believe it was, when the moratorium was in effect and everybody was saying they are all worried about zoning,

—Excuse me, about the proliferation of signs and signs going up. We have City Council voting not only for COA in a permit type situation but they are rezoning property at Allen University purely for the purposes of allowing COA to have a C-3 zoning for purposes of putting up a sign.

We also have contributions in the record of at least $26,000 and $15,000, the largest contributions that COA has ever given in their tax returns, to the city of Columbia.

THE COURT: $26,000?

MR. LEWIS: On one of them and $15,000 on another tax return, as contributions to the City of Columbia.

THE COURT: Anything else?

MR. LEWIS: I ran down as fast as I could and that is what I come up with right now, your Honor.

• • • •

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE MATTHEW J. PERRY (1/20/86) [PAGES C.A. APP. 1349, 1369]

• • • •

MR. ROBINSON: I will start with Noerr-Pennington. You know what that doctrine is. You are fully familiar with it. What we are talking about here, the only thing that will take it out of that, what we are talking about is an illegal conspiracy. Hostile atmosphere. There is no quesion but that both County and City Council were upset about billboards jumping up all over everywhere. There is no evidence that COA caused the atmosphere or the atmosphere was the result of any conspiracy. The fact it existed. We don't doubt it existed. They are having to say they were upset. It doesn't indicate a conspiracy.

• • • •

MR. MEGGS: Yes, sir, I understand. Our motion relates—It reads as a result of Defendants monopolization, attempted monopolization or conspiracy. I will concede that subject to all these other things we will talk about in the morning, perhaps we are in on the conspiracy to monopolize claim but not the monopolization which can be unilateral activity and not on the attempted monopolization claim.

• • • •

EXCERPTS FROM TESTIMONY OF CANTEY HEATH [PAGES C.A. APP. 1388, 1485-1486]

* * * *

A My name is Cantey Heath.
Q Where do you live?
A 1726 Roslyn Drive in Columbia.
Q What is your age, sir?
A Forty-nine.
Q How long have you lived in Columbia?
A Twenty-three years.
Q What is your relationship to Columbia Outdoor Advertising?
A I am president.

* * * *

A He didn't get a sign ordinance in 1980 to keep Naegele out.
Q Why?
A He never attempted to.
Q Because Mr. Naegele decided he wasn't coming into town?
A I don't know what Mr. Naegele decided. Mr. Naegele suggested it, too, I think.
Q Do you remember that letter?
A I do.
Q What does that say about an ordinance?
A It says, "I discussed your suggestion with the Mayor about reworking our existing sign ordinance and he promptly said, 'No problem'."
Q What else does it?
A "My son Jim has begun a study to determine exactly what restrictive measures we should request."
Q What kind of measures?
A Restrictive measures.
Q Restrictive measures. There you are in 1980 knowing if you talk to the Mayor you would get restrictive measures, no problem?
A That is what the letter says.

Q Of course you didn't get them at that time. Did you?
A Didn't try.
Q Because Naegele didn't come into town, right?
A He didn't. He never has come.
Q But as soon as Omni came into town, did we get a restrictive ordinance?
A We who?
Q Columbia. Is there a restrictive ordinance?
A The city put in an ordinance.
Q Was it a restrictive one?
A More than it was, but not as bad as it could have been. You could have had 2,000 foot spacing or 1,500. It could have been worse.

* * * *

Q But you wanted 1,000?
A I told them I could live with it. I never suggested it.

* * * *

EXCERPTS FROM TESTIMONY OF JOHN CHILDS CANTEY [PAGE C.A. APP. 1634]

• • • •

Q They send you out with free discretion and you don't know how much it takes to make money?

A Yes, sir, pretty much so. I am not concerned with that.

• • • •

EXCERPTS FROM TESTIMONY OF WILLIAM EDWARD "CHIP" CLARY, JR. [PAGES C.A. APP. 1634-1635, 1689-1690]

• • • •

Q What is your name, please?

A My full name is William Edward Clary, Jr., my nickname is Chip.

Q Where are you from?

A From Columbia.

• • • •

Q Now, what is your connection with Columbia Outdoor, Mr. Clary?

A Well, I was hired as a sales representative in 1967. During that time period I was in sales. I helped or assisted in the leasing. Virtually almost every area of the company to some degree because at that time it was just Cantey Heath and myself that made up the principal work force outside of construction or posting, those areas of the company.

• • • •

Q Let's look at a few of them and see where they are. Here is one. Isn't this interesting. You got Plaintiff's Exhibit 88?

A Yes, sir.

Q That is a double billing for your politician friend, Lloyd Hendrix?

A Those one or two particular boards in that particular case I moved Winston somewhere else. That is when you had single member districts for election time. That was a situation where I moved a couple of boards.

Q You put him at Bull and Harden?

A That was in his district.

Q Very important to that politician, right?

A Because of his voters.

Q And you put him right over top of R. J. Reynolds tobacco company?

A Yes, sir, I did, but I moved Winston somewhere else.

Q Where is the letter telling Winston you were going to do that?

A There is no letter, Mr. Lewis, as I explained, I had latitude.

Q Where is that letter and document saying about all this latitude you had?

A I said there is no document. It was a verbal agreement.

• • • •

EXCERPTS FROM TESTIMONY OF JAMES WILLIS CANTEY, JR. [PAGES C.A. APP. 1715, 1847-1848]

• • • •

Q Your name, sir?

A James Willis Cantey, Jr.

Q Are you the oldest of the three boys?

A Yes, sir, I am.

Q How long have you been with the company?

• • • •

(Plaintiff's Exhibit 158 received in evidence).

Q Looking at this Exhibit 158. It is a proposed advertising sign ordinance, is that correct?

A Yes, sir.

Q I believe you told me in your deposition that, "I think I made this up as a suggestion to be presented to either the Planning Commission or this committee of Paul Bennett and Patton Adams." Did you?

A Yes, sir, I believe I did. This particular—

• • • •

EXCERPTS FROM TESTIMONY OF T. PATTON ADAMS [PAGES C.A. APP. 1874-1875, 1924-1925]

Q You are T. Patton Adams, is that correct?
A I am.
Q Mr. Adams, are you presently on City Council in Columbia?

• • • •

Q You are familiar in 1978 that National Advertising came into town and started building what you say are signs like this as big as that wall?
A That National came in? I don't know when they came in.
Q 1978, will you accept that?
A If you tell me that is when they came in, I will accept it.
Q And what ordinance with all that hatred for billboards at that time did you have passed? You were on City Council then, weren't you?
A Yes, in 1978. What was your question?
Q What ordinance did you have, with your hatred for billboards, did you have passed when National came in here putting all those signs up?
Q We did not have an ordinance at the time that appropriately addressed the matter.
Q When did you come on?
A I was elected in '76.
Q All the way up—That is six years you didn't do anything about ordinances?
A That's right.

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EXCERPTS FROM TESTIMONY OF KIRKMAN FINLAY [PAGES C.A. APP. 2029, 2056, 2065]

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Q Mr. Finlay, how long have you been Mayor of the City of Columbia?
A Since 1978.
Q Were you on City Council prior to 1978?
A Yes, I was on City Council from July 1, 1974 to July 1, 1978.
Q You have been Mayor continuously since 1978?
A Yes.

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Q Mayor Finlay, I believe your counsel asked you about free billboards. You did get free billboards the year you ran for Mayor?
A Excuse me. You said free or three?
Q Free.
A From?
Q Mr. Cantey?
A Yes.
Q I believe you got six free billboards?
A Yes.

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Q Now, we were talking about, I believe, you looked at a document in 1979, was that it, when you saw that sign at Millwood?
A Yes. This memorandum of June 1?
Q Yes, sir.
A Yes, sir.
Q You got all concerned about that, I believe, and you wrote a little memo?
A I think that is your characterization of it. I expressed an interest or a concern to the city manager, yes.
Q I think you said you got an awful lot going on, you got too busy to follow up on it?
A Yes. At least I did not follow up on it. Let me say that.

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EXCERPTS FROM TESTIMONY OF WILLIAM OUZTS [PAGES C.A. APP. 2154, 2169]

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Q Mr. William Ouzts?
A Yes, sir.
Q Mr. Ouzts, you are presently on City Council in Columbia?
A Yes, sir.
Q How long have you been a member of City Council?
A I am in my 30th year, almost 30.

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Q You told me that you just had the permits jerked because there were jungles of signs?
A The phraseology of having permits jerked is not mine. When you tell me that, it is not mine. We enacted an ordinance seeking time to have proper standards as far as billboards are concerned.
Q Proper standards?
A Right.
Q The standards you had prior to that were improper standards?
A It turned out to be.
Q Why?
A Because it seemed to be there were no regulations pertaining to distances, back to back and across the street and things like that. We didn't have those in effect before. It appeared we needed them.
Q Only after Omni came to town?
A No, I won't say that.
Q You didn't need them back when COA, your pal, was here, did you?
A The need for standards would be needed at any time, I would think, proper standards.

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EXCERPTS FROM TESTIMONY OF GRAYDON V. OLIVE, JR. [PAGES C.A. APP. 2176, 2189, 2191-2192]

Q You are Graydon V. Olive, Jr.?
A That is correct.
Q Mr. Olive, you are the City Manager of the City of Columbia?

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A I was here. I wasn't on the job.
Q You weren't on the job at that time?
A Correct.
Q You will agree with me, won't you, it is pretty drastic when an ordinance is passed or reading given that is written on the back of some piece of paper that shuts down an industry in the town, wouldn't you?
A I would say that it is not too unusual. It is not the usual procedure to have an ordinance that is adopted prior to having the City Attorney's office draft it. However, it has been done and can be done on a voice motion.
Q Indeed, it is a drastic step to shut down a particular business operation in the city, isn't it?
A That is a matter of opinion.
Q You don't think that is a drastic step?
A Well, probably is, yes.
Q Sir?
A Yes, it probably is.
Q Of course, you weren't here at that time so you couldn't give them your advice, could you?
A That's right.

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Q That is another ordinance that just shuts down the entire city, correct?
A It says, "It shall be unlawful for any person to erect within the city a billboard for off premises commercial advertising."
I don't believe it ever got passed?

Q At first reading.
A That is my recollection.
Q Somebody wanted it?
A Apparently.
Q You don't know who that would be either, do you?
A No, I don't.

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A No, I don't.
Q You will agree at the same time Judge Cureton had thrown out the March 24 ordinance, don't you agree?
A Yes, I do.
Q That was upsetting to somebody, they wanted another ordinance, didn't they?
A Yes.
Q We don't know who that is?
A No, sir.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE MATTHEW J. PERRY (1/29-30/86) [PAGES C.A. APP. 2350, 2396-2397, 2412, 2448-2449, 2456, 2462-2463, 2477-2478]

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We allege, and the Court—I might mention this. We are responsible for telling you the facts. We are responsible for getting the facts out of the witnesses, putting the facts in as exhibits, that is, Omni. The other sides are responsible for their facts. Judge Perry is responsible for the law. I am going to kind of explain the law. When he says "charges," he is going to charge you for an hour. That means he is going to tell you what the law is for an hour. He is going to tell you what monopoly is. He is going to tell you what conspiracy is. He is going to tell you what constitutes a violation of the Unfair Trade Pratices Act. He will tell you the kind of principles you must apply to the facts. So when he charges you, you hear his principles and then you got the facts you remember and you, the jury, are the people that judge the facts, and you apply his principles to the facts and come up with a verdict. It sounds real easy and hopefully it will be.

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What we say in this case is that we were treated unfairly. There is a lot of activity, a lot of hustle and bustle, a lot of inconsistencies which all point to the one fact that Omni Outdoor Advertising was cut out of Columbia as fast as City Council and Willis Cantey could get it done. When they did that, they didn't have to do it with an evil heart, they could have thought it was a great thing for Columbia, but they knew it hurt us and they knew it was anti-competitive and they knew that it was going to shut us out and let us not compete or they should have known it. They were put on notice, and we were hurt to the tune of $1.8 million. On top of that to contribute to it and add to it and be a part of

it and be an integral part of it, we had Columbia Outdoor Advertising double billing. Taking our clients and double billing.

I ask that you look at these exhibits, that you study them, you think about it, and you will see that logic and common sense puts you to only one conclusion, and that we were unfairly treated, that we were hit with anti-competitive ordinances which they knew or should have known were anti-competitive and that they worked in concert with each other to come up with the ordinance that COA wanted.

* * * *

So what is the results of all this. First, they didn't prove a conspiracy. The fact they proved a suspicion of one is just not enough. They really ought to be ashamed to tell 13 officials you conspired, you are crooked or whoever it was they charged they can't prove it. They didn't prove any connection whatsoever between their failure to reach their goal of a profitable plant by the end of February with anything the City or COA did.

* * * *

This case involves a claim by this plaintiff that those five gentlemen set aside the public interest and took up the torch of Columbia Outdoor Advertising. That is what the case is about; corruption. Don't be fooled by the business of well these fellows might have taken this action with the most laudable of motives because that frankly is not the case.

Let's talk for a minute about conspiracy in the context of this case. It is the Plaintiff's burden here to prove by a preponderance of the evidence that a majority, three at least, of the five councilmen who testified before you with specific intent to harm Omni passed the ordinances in conjunction with an agreement with Columbia Outdoor Advertising or its representatives with a specific plan, a common plan to harm Omni. That is what this case is about. I believe that his Honor's charge will conform substantially to that position.

This is a case of government corruption. No matter how you slice it. The government doesn't function in a vacuum. * * *

* * * *

The complaint here is this conspiracy got going a long time ago, a long time prior to March 1982. I submit to you there is no way that March ordinance was the result of any kind of conspiracy or agreement. * * *

* * * *

Now, common sense tells me, and I submit would tell you, that if the City Council way back in 1981 or even March of 1982 came to this common plea plan, agreed on this scheme to enact ordiances, to illegally keep Omni out of the city, with the specific intent to accomplish that objective, I submit to you that this meat grinder process would have never taken place.

* * * *

THE COURT: All right. Let's see, I guess I will handle the discussion on the new submissions after the next argument. However, for purposes of the verdict, I am sure you will have enough time Ms. Powell, but I need to get as much out of the way as I can. There is no objection to the verdict. However, use our language.

For your information, I am submitting two interrogatories to the jury. These are perceived necessary because as to counts one and two, the Court needs the guidance of the jury. Therefore, an interrogatory as to count one would be as follows: Do you find from a preponderance of the evidence that the Defendants, Columbia Outdoor Advertsiing Company and the City of Columbia, conspired in restraint of trade against the Plainitff Omni Outdoor Advertising Company, with a yes or no.

You will note I have not outlined the various courses of conduct. I just put that one there. You see, if the answer to that question was no, then quite obviously there will be a dispute among you on whether any re-

sulting verdict for the Plaintiff against COA would be maintainable. I won't even talk about that now, but I see that lurking in the background. In any event, I need the guidance of the jury on that question.

A similar question, worded similarly with reference to whether Columbia Outdoor Advertising Company and the City of Columbia conspired to monopolize the outdoor advertising market. I think I indicated yesterday, concluded that the relevant market, whether we call it a market or a submarket is outdoor advertising. Of course, I am calling it Richland and Lexington Counties. Does everyone agree the geographic area is clearly stated?

MR. LEWIS: Yes, sir.

THE COURT: I am going to submit these interrogatories in addition to the verict options. The answers to these questions would serve important guidance to the Court. Do you have any question, Ms. Powell?

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EXCERPTS FROM OMNI'S CLOSING ARGUMENT TO THE JURY [PAGES C.A. APP. 2480, 2482]

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Well, because we had an agreement. We had cooperation. We had the City and Columbia Outdoor wanting the same thing. Mr. Meggs says it has to be corrupt. You will hear his Honor charge it doesn't have to be a bad motive. It doesn't have to mean that you think you are doing wrong. What it means is that there is agreement between the City and Columbia Outdoor that they limit the number of signs. That is all you have to find, that they worked together to limit the signs.

If the purpose is because they think its great, that doesn't matter. The point is that they tried to limit the signs. Once they tried to limit the signs, they violated the antitrust laws, period. They agree the purpose of everything here is to limit the signs, they violate the antitrust laws and it is illegal. It doesn't matter how good a heart they have.

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You can't go out on the corner and yell out cuss words. You can't go out on the corner and incite riots. You can't go to your legislator and you can't sit down with him and you can't ask him to pass a personal bill purely for your own protection. You can't go to the city and ask that. You can't go to City Council and say I want this anti-competitive bill because it is going to help me. I want to close it down. You can't ask for illegal things, and they did. Everybody says I want my street fixed. I want this road paved. I want lower taxes. Those are fine, but you don't go and ask people to pass an ordinance to protect you.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE MATTHEW J. PERRY (1/20/86) [PAGES 2486, 2494-2496]

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No, I think this case is a real good example of, yes, political favors, of coming in there and seeing and making sure there was an ordinance, and knowing or should have known it was anti-competitive and passing it anyway, which is a violation, which is wrong.

• • • •

Yes, they had an honest employee in their business. They had someone in the business who told what happened and they wrote it on the sheets and they are right here for you. I want you to read them. This goes with Exhibit 86. It is part of Exhibit 165. It is the chart sheet for the double billing shown on 86. The double billing. I want you to look at it. The double billing that it shows was W N O K was pasted over Newport. Newport was supposed to have this location in April. There is the word written right there. Snitched. Snitched. You look at it. Snitched. Not moved, not changed, snitched. You look at them. They are in here. There is a bunch of them. Some employee in that company knew what was going on and you notice they didn't bring any of them in here. Snitched. Not only did they snitch from the cigarette companies, they snitched from Omni. Leaf through it, look at it. Those snitchers, they conspired.

Omni came in here and sure they came in here and they expected to make a profit, but they didn't make a profit they made a loss, an out of pocket real dollar loss of $777,000. That is no shelter, that is no nothing, that is Mr. Dooner out of the pocket, because they snitched and conspired.

They devalued his plant. Who is going to pay a good price for a plant that loses money and has 41 percent occupancy? Nobody. So he lost $782,000 for $1,559,000.

Mr. McDonald comes in here and you know the only thing he complained about? Profit. He said the profits he was going to get were too high. Take them away if you believe that. He didn't complain about the $1,559,000.

Conspiring and snitching. That is what I want you to look at. Look at the book. Snitched. They got caught by their own people.

You heard a lot of this testimony. You got the evidence. We too appreciate it. You have had the patience to put up with us, to listen to me, to stand here and go through what—I told you I wish we were going to be a Perry Mason, but we weren't. We do appreciate it.

The time comes now for me to sit down, but as I do I want to ask you to do one thing. You are going to go in the jury room and you are going to look through all these facts. I want you to remember the snitch, the conspiracy. Also you are to return a verdict, and I ask you to return that verdict in favor of the Plaintiff.

Do you know what the word verdict comes from? It comes from the Latin word "vere dictum". It means to speak the truth. That is what we ask of you. Speak the truth. Tell the snitchers and the conspirators they can't do that, and return us a verdict. Thank you.

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INSTRUCTIONS TO THE JURY
[PAGES C.A. APP. 2497(2)-2497(82)]

CHARGE TO THE JURY BY THE HONORABLE MATTHEW J. PERRY

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, now that you have heard all the evidence and the arguments of the attorneys, it becomes my duty to give you the instructions of the Court concerning the law that is applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts as you shall find them to be from the evidence that has been presented. You are not to single out any one instruction alone as stating the law, but you must consider these instructions as a whole.

Now, of course, the instructions will be compartmentalized and, of course, I will give you separate instructions as to each of the three separately stated causes of action that will be submitted to you, but you consider all of the instructions. When I am talking about separate things, consider all of the instructions as they relate to that particular subject matter.

Neither are you to be concerned with the wisdom of any rule of law that I shall state to you. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that which is now being given you in these instructions, just as it would be a violation of your sworn duty to base a verdict upon anything other than the evidence that has been presented.

I have each day, and I suppose I began sounding like a broken record, admonished you not to speak with anyone about the case, not to permit anyone to talk to you about it. I have from time to time reminded you that you should base your verdict solely upon the evidence that is produced in court.

In deciding the facts of this case, you must not be swayed by any bias or prejudice for or against any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated to you by the Court and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community holding the same or similar stations in life. Of course, all of the parties to this case are entities. There are two corporate entities and there is a governmental entity. So there are no individual defendants in this case.

A corporation is entitled to the same fair trial at your hands as a private individual. The law is no respector of persons, and all persons including corporations stand equal before the law, and are to be dealt with as equals in a court of justice.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees. I have said that with reference to the corporate parties. Now, remember we also have a governmental entity. You consider this instruction as it applies to governmental entities also. In general any agent or employee of the corporation may bind the corporation by his or her acts and declarations made while acting within the scope of that person's authority delegated to that person by the corporation, or within the scope of that person's duties as an employee or agent.

Now, I stated earlier it is your duty to determine the facts. In so doing you must consider only the evidence I have admitted in the case. The term "evidence" included the sworn testimony of the witnesses and the exhibits admitted in the record.

Well, it might also include, it does in fact also include —I don't know there are any stipulations in this case. You will note this has been a very hard fought case.

The parties have been very contentious, but if there are any stipulations of fact, why that, too, would be evidence. Of course, evidence would be things concerning which the Court takes judicial cognizance.

Now, remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case. In so doing to call your attention to certain facts or inferences that might otherwise escape your notice.

I mentioned to you at the outset that the lawyers are advocates for the client they represent. I mentioned that you would see excellent lawyers operating in this case. By now, I hope that you will agree with me that they are all very fine lawyers. Lawyers are obligated to represent the interests of their clients respectively. To do so with vigor, with loyalty and fidelity to their clients and the interests of their clients. The lawyers in this case have done that.

When lawyers vigorously represent the interests of their clients they sometimes cross each other, and speak seemingly in discourteous fashion to each other. I don't think there has been too much of that. There has been some rather testy moments, but they have, of course, acted in the finest tradition of members of the legal profession in this case.

Now, do not hold against them or their clients the fact that lawyers have found it necessary to speak out from time to time. That is their duty, they are obligated to act in that fashion. Should any of you ever have the occasion to find yourselves in a courtroom, I know that each of you would want a lawyer who would be loyal to you and he who would vigorously represent your interests as and when the occasion required. So do not hold anything against them or their clients if they have from time to time seemed a little testy about some question or the other.

Do not take any guidance from the manner in which I responded from the rulings I made when they spoke out. I was at the moment only fulfilling one of the roles, one of the many roles that is mine as the presiding Judge in this case, ruling upon the admissibility of a given item of evidence at that particular time. That had nothing to do and should not be considered by you as an attitude on my part as to who is right and who is wrong in this case.

Now, in the final analysis it is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you, so while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your common experiences.

In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been presented.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept as true and accurate all of the evidence. You are the sole judges of the credibility or believability of each witness and the weight to be given the testimony of that witness.

Now, in weighing the testimony of a witness, you should consider that witness' relationship to the Plaintiff or to the Defendants; the interest, if any, of the witness in the outcome of the case; the manner of the witness while testifying; his or her opportunity to observe or to have acquired knowledge concerning the facts about which he or she has testified; the candor, truthfulness, fairness, intelligence of the witness; the extent to which he or she has been supported or contradicted by other credible evidence. You may in short accept or reject the testimony of any witness in whole or in part.

Now, you just wouldn't reject out of hand everything a witness said unless, of course, there appears to be some

reason existing from the other evidence that has been presented for you to so do it.

Now, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or impeached by a contradictory evidence, by a showing that he or she has testified falsely concerning some material matter, or by evidence that at some other time, some time other than that, than the time the witness is testifying in court, the witness has said or done something or has failed to say or do something which is inconsistent with that witness' in court testimony. If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

Now, in this case the lawyers have already told you what the contentions are. Some of the issues that existed and that were originally in the case are no longer there. There are three counts in the complaint left. I am not going to read them out to you. I am only going to refer to them. The lawyers have already spent a lot of time telling you about them. I would not really accomplish anything by reiterating them, but I mention them now as a prelude to the instructions I am going to give you as they relate to each of these matters.

In its first count, the Plaintiff alleges that the Defendants, Columbia Outdoor Advertising Company and City of Columbia, have violated the antitrust laws and they have conspired to restrain trade. They have conspired against this Plaintiff to restrain trade in several respects. Now, I am going to stop right there. That is the one dealing with conspiracy to restain trade. As I have said, the lawyers have already told you what their essential allegations are in that regard.

You know that the Plaintiff alleges that the Defendants conspired to keep the Plaintiff out of the relevant market with respect to outdoor advertising, the outdoor advertising business, or to limit the extent of this Plaintiff's participation therein.

Secondly, the Plaintiff alleges that these Defendants, Columbia Outdoor Advertising Company and the City of Columbia conspired to monopolize the outdoor advertising business, conspired against this plaintiff.

Also it is alleged, and this further allegation is solely against Columbia Outdoor Advertising, that Columbia Outdoor Advertising monopolized and attempted to monopolize the outdoor advertising business in the relevant market. That is to say, monopolized and attempted to monopolize in a fashion that damaged this plaintiff.

Then, of course this plaintiff alleges that, and this count applies only to Columbia Outdoor Advertising Company, that Columbia Outdoor Advertising Company committed an unfair trade practice, or one or more unfair trade practices against this plaintiff thereby causing damage to this Plaintiff.

Now, I have said that in capsule fashion. I have summarized down to the bare minimum. I have not given you all of the wherein befores and the herein and wherefores, and I have not given you the many, many pages of allegations that the parties have given. They have summarized those for you. I have only introduced you to the subject.

The Defendants, of course, have given their responses. Columbia Outdoor Advertising denies that it has conspired against the plaintiff. It denies that it has monopolized, and, of course, it denies it has engaged in an unfair trade practice.

It says further that with respect to any act committed by any person associated with the city—correction.

That with respect to any act committed by any person associated with this Defendant in an effort at per-

suading the pasasge of ordinances or legislation, that this was activity that they have a perfectly legal right to pursue, and that, act of course, does not constitute evidence of a conspiracy.

City of Columbia likewise denies that it has conspired. It denies that it has conspired either to restrain trade or that it has conspired to monopolize.

Now, the city is not a part of the Unfair Trade Practices Act allegation. I don't know whether I said it a moment ago, but the Defendant, Columbia Outdoor Advertising, denies it committed an unfair trade practice against this plaintiff.

Of course, the parties have said a lot of other things in their pleadings, and, of course, they make numerous allegations in support. The Plaintiff makes numerous allegations in support of its claim that the Defendants conspired, that the Defendant, Columbia Outdoor Advertising, monopolized or attempted to monopolize, that the Defendant, Columbia Outdoor Advertising, committed unfair trade practices. They make lots of allegations. You have heard all of those summarized for you by the Plaintiff's attorneys.

The Defendants make a number of assertions in support of their contentions that they did none of these things. You have heard their various explanations summarized for you. I will not go further into them.

Now, the burden is on the Plaintiff in a civil action, such as this one, and that is what this is. This is a civil case. I think I have told you that. You know that. It is a civil action. An action, to say, between private parties as opposed to a criminal case. So in a civil action such as this the burden is on the Plaintiff to prove the essential elements of that party's claim by the preponderance of the evidence.

A preponderance of the evidence means such evidence as when considered and compared with that opposed to it has more convincing force and produces in your minds a

belief that what is sought to be proved is more likely true than not true.

In other words, to establish a claim by the preponderance of the evidence merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses regardless of who may have called them and all the exhibits received in evidence regardless who may have produced them. If the proof should fail to establish any essential element of the Plaintiff's claim by a preponderance of the evidence, the jury should find for the Defendant as to that claim.

Now, of course, where more than one claim is made, as is the case here, you consider all of the evidence as it relates to each claim separately.

You will, I hope, give separate consideration to each of the three separately stated claims.

Consider all of the evidence as it relates to that claim and consider that evidence no matter where it came from. No matter who produced it. If the preponderance of the evidence does not support each essential element of a claim, then the jury should find against the party having the burden of proof as to that claim.

Now, I am going to go into some instructions as they relate to each of the causes of action. I mentioned to you that the first two causes of action arise under the Federal law entitled 15 United States Code Section 1.

It is provided that every contract combination in the form of a trust or otherwise or conspiracy in restraint of trade or commerce among the several states or with foreign nations is declared illegal. Of course, that is what the statutory law provides in that regard. Policy of that law is that competition and interstate trade and commerce should be free from unlawful conspiracies, combinations or agreements in restraint of such commerce and trade.

The idea is to preserve and advance our system of free competitive enterprise. To encourage free and open competition in the market place to the fullest extent practicable all to the end that the consuming public might be able to receive better goods and services at lower prices.

It is not the purpose of the antitrust laws to inhibit the legitimate conduct of business operations, to force every type of business into a common mold or to render illegal the ordinary contracts or combinations of businessmen or firms in the usual devices to which they resort to promote the success of their businesses, so long as these combinations and devices do not necessarily have a direct substantial and unreasonablely restricting effect on competition and interstate commerce, as the term or phrase will immediately reveal. We are talking about conduct across state lines.

It should be emphasized that it is the purpose of the antitrust laws to promote competition by encouraging businesses to compete with one another. This competition is frequently vigorous. Such hard competition is not a violation of the antitrust laws. Indeed it is what the antitrust laws seek to accomplish.

The law recognizes that in the normal competitive process some competitors are going to lose sales, and others are going to gain sales sometimes at the expense of another. In fact vigorous competition may actually cause some to go out of business. This is the normal competitive gamble. No competitor is protected from the effect of lawful competition whatever the effect may be.

Another thing that the antitrust laws do not do is to prohibit every kind of practice which someone may think is evil or unfair. Rather they are concerned solely with those particularly practices which tend to cause a breakdown of the competitive system and to produce monopoly.

There are many kinds of unquestionably wrongful conduct which, nevertheless, are not prohibited by the antitrust laws, because however bad they may seem, they do

not have this type of specific tendency to suppress competition, and thus raise prices to the consumer.

A conspiracy is a combination of two or more persons to accomplish by concerted actions some unlawful purpose, or to accomplish a lawful purpose by unlawful means.

That term "conspiracy" sometimes mistifies the listener. The explanation that one gives as to what it is sometimes doesn't give much help. Let me see if I can't do a little bit better job.

A conspiracy is an agreement between two or more persons to violate the law. How does that sound? That is a little bit better. Or to do something otherwise lawful in an unlawful manner. Let's see if I can try it another way.

A conspiracy is concerted action between or by two or more persons, that is to say, where two or more persons acting together towards a common goal, that goal being the violation of the law, or by concert they act unlawfully to accomplish an unlawful result.

All right, I am going to move forward in the hope you got some idea now what a conspiracy is. If one or more such person's knowing—Let me start that sentence again.

And if one or more such persons knowingly does any act to effect the object or objects of the conspiracy, that person becomes a participant therein or a member of the conspiracy.

The evidence need not show the members entered into any express or formal agreement, or that they directly by words spoken or in writing stated specifically between themselves what their object or purpose was to be, or the details or the means by which the object or purpose was to be achieved.

For the most part, people rarely reduce agreements to violate the law to writing. Normally, such agreements come into being out of the public view. So it would be unusual if there were any formal agreement for the simple reason that conspirators do not normally put their

understandings or agreements in writing, nor do they make their plans public in the usual course of events.

Conspiracies involving elaborate arrangements are generally not born full grown, rather they mature by successive stages which are necessary to bring in the essential parties, and not all of those joining at the early stages make known their participation to others who later come in. It is, therefore, sufficient to show the essential nature of the plan and the conspirators connections with it without requiring evidence or knowledge of all of its details or of the participation of others.

Now, in this regard—Is someone experiencing a problem? Is everybody all right? All right. Remember then, remember what I told you. Any time you need a moment, just let me know. I know it is not easy to listen to nonstop oratory. I have been going now for just over 35 minutes. I know how some people feel on Sunday morning when the Minister goes too long.

Participation in a conspiracy need not be proved by direct evidence. By the way, you will recall, or did I ever tell you? If I did not tell you before, let me tell you now.

There are two types of evidence a jury can consider. One is direct evidence which normally comes through the testimony of an eyewitness or someone who has direct knowledge concerning the existence of a fact. The other is by circumstantial evidence.

Circumstantial evidence does not come by way that of an eyewitness but it comes by proof of a series of circumstances all of which when linked together point to the existence or nonexistence of a certain fact.

So a conspiracy may be proved either by direct evidence, and that is the one, you know, we said that, of course, it could be proved if somebody were to write it down in a written agreement, but most people don't do that, or it could be proved by circumstantial evidence, by the proof of the existence of a series of facts, none of which standing alone would establish the fact, but all of

which linked together point to the existence of or the nonexistence of a fact.

A common purpose and plan may be inferred from a development and putting together of circumstances, and the conspiracy may be shown by circumstantial evidence or permissible inferences from the facts.

So in order to prove the existence of a conspiracy, a party need not show you an express formal agreement to do so. You are allowed to infer the existence of a conspiracy from the course of dealings or through an exchange of words and acts. A conspiracy need not be proved by direct testimony or other direct evidence. Therefore, the law allows you as members of the jury to infer the existence of a conspiracy from things actually done, taking into consideration all of the facts and circumstances surrounding the conduct of the parties who are charged with the conspiracy.

Proof of conspiracy, however, requires more than mere suspicion or conjecture, and there must be either direct proof of a conspiracy or circumstantial evidence sufficiently strong to establish its existence. It is sufficient, however, if it is established by the preponderance of the evidence or the greater weight of the evidence that two or more parties in any manner came to an understanding to establish a common and unlawful design.

It is not necessary that each member should know the exact part which the other member was to play in the conspiracy. It is enough that a defendant be proved to have been a member of the conspiracy, be shown to have knowledge that the party who he was assisting was engaged in a common and unlawful plan. Such knowledge may be inferred from a Defendant's conduct and attendant circumstances where the acts proved are of a nature to satisfy you that a defendant was aware of the fact that the party with whom it was acting was engaged in the unlawful activities charged.

Where two persons actuated by the common purpose of accomplishing an unlawful act purposely working to-

gether in furtherance of the unlawful scheme, each of such person's becomes a principal in the conspiracy, although the part one of them may take therein is a small or subordinate one or is to be done separately or at a distance from the others.

Now, you will note that not every act in restraint of trade is illegal under the statute that I have read. By the way, that statute is popularly known as the Sherman Antitrust Act.

So not every act in restraint of trade is illegal under the Sherman Act, but only when it is a result of a combination contrast or conspiracy. These words, of course mean practically the same thing.

A conspiracy then once again is a combination or agreement between two or more persons to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

A conspiracy is a kind of partnership in which each member becomes the agent of the other member. There can be no conspiracy unless more than one person is involved. For our purposes, a corporation is a person and a municipality is a person. So that the term person here means entity in its broad sense, just as it would apply to an individual, so, too, it means corporations and governmental entities.

The very word "conspiracy" means together with someone else.

I sometimes have remarked in response to arguments of the attorneys in your absence that in the law of conspiracy it takes two to tango. It takes two or more to conspire.

A person couldn't conspire with himself or herself. A corporation cannot conspire with itself. A municipality cannot conspire with itself.

If its conduct is said to be conspiratorial at all, it must be along with someone else in accordance with the definitions that I have earlier given you.

In this regard, a corporation and its officers and employees are considered by the law to be only one person, thus you cannot find that an agreement between two or more offices or employees of a corporation is a conspiracy unless at least one other person who was not an officer or employee of that corporation was also a party to the agreement.

As I said a moment ago, a conspiracy requires at least two independent parties, and a defendant cannot be said to have conspired if indeed its conduct was only by itself or in the case of a corporation within its corporate family.

Before you can find that the City of Columbia and Columbia Advertising Company formed a conspiracy as complained of by the Plaintiff, you must find by a preponderance of the evidence first that the conspiracy, that a conspiracy was knowingly formed.

Second, that these Defendants knowingly participated in a common and unlawful plan with the intent to materially aid or further some object or purpose of the conspiracy. It is not enough that the evidence may raise a mere suspicion.

Remember now you cannot find for a party if its evidence raises only a suspicion. You cannot in the final analysis base a verdict on suspicion, conjecture or surmise.

Now, to act or participate knowingly means to act or participate voluntarily or intentionally, and not inadvertently or by mistake, accident or some other lawful reason, innocent reason.

So if a defendant or other person with understanding of the unlawful character of a plan intentionally encourages, advises or assists by any act or by any manner whatsoever for the purpose of furthering the unlawful scheme, he thereby becomes a knowing participant, a conspirator.

A person who has no knowledge of a conspiracy but who happens to act in a way which furthers some ob-

ject or purpose of the conspiracy, does not by such act become a conspirator.

In determining whether or not a defendant or other person was a member of a conspiracy, the jury is not to consider what others may have said or done. That is to say, the membership of a defendant or any other person in a conspiracy must be established by evidence in the case as to that party's own conduct by what that party itself knowingly said or did.

Unless you find by a preponderance of the evidence that every person understood from something said or done by the others that he was committed to the plan, there can be no conspiracy and, therefore, no violation of section 1 of the Sherman Act.

Coming along now. I have been talking 50 minutes. I got a lot further to go, but I will let you know where I am in about ten minutes.

Now, the Plaintiff must do more than present a fact situation, in order to recover, which may suggest the existence of an agreement, the Plaintiff must present facts which cannot be explained away as innocent conduct. If the evidence as a whole can be understood as innocent, or as nonconspiratorial behavior, even if it is also consistent with a conspiracy, then the Plaintiff has not proved a conspiracy.

Now, the only restraint of trade prohibited by antitrust laws is an unreasonable restraint of trade. The law recognizes that it may be impossible to conduct a business without in some degree restraining trade. The antitrust laws were enacted for the protection of competition and not for the protection of competing businesses.

Therefore, the Plaintiff must establish that the Defendant's acts injured not only the Plaintiff, but competition in the advertising market within Richland and Lexington Counties, the outdoor advertising market.

Therefore, in determining whether a restraint in trade exists, you must decide whether the conduct which a

party contends to be in violation or to be in restraint of trade was—I have ruined that sentence. Let me start it again. Maybe I am getting tired.

Therefore, in determining whether a restraint of trade exists, you must decide whether the conduct which is found tends to restrict or otherwise control free and open competition in the particular business involved. In determining whether or not such an reasonable restraint exists, you need not find a specific public injury, but you must find that the conduct tends or is reasonably calculated to prejudice the public interest of free and open competition.

Now, while you will make your determination from consideration of all the evidence in the case, including the effect on the outdoor advertising industry, and the economic effects upon competition.

Now, in determining whether or not a particular restraint is reasonable or unreasonable so that it is a violation of the antitrust laws, you may consider the following factors;

First, the nature of the particular industry involved.

Second, facts which are peculiar to the particular industry involved.

Third, the nature of the restraint and its affect actual and probable.

Fourth, the reasons for adopting the particular practice which is alleged to be a restraint.

Now, in determining whether the City of Columbia was a member of a conspiracy, if any, with Columbia Outdoor Advertising Company, as charged, you must not consider what others unconnected with the City of Columbia may have said or done.

The City of Columbia's involvement in the alleged conspiracy must be established, if at all, by the evidence in the case as to its own conduct, that is to say, its own acts and statements.

The City of Columbia is recognized as a corporation under our laws. A city in South Carolina can act only

by way of its elected governmental body, its City Council, its Mayor.

The City of Columbia operates under the council manager form of government. Under this form, the Mayor has no more legal authority than the other members of City Council.

The local laws of the City of Columbia such as those involved in this lawsuit, are enacted by ordinance of the City Council. In order to enact an ordinance a majority of City Council, including the Mayor, must vote in favor of the measure.

During 1982 the Columbia City Council consisted of five persons, its Mayor and four members of its City Council. Since that time it has enlarged. There are more of them now.

I previously told you that in order to enact an ordinance a majority of the City Council must vote in favor of that measure.

Now, with regard to conduct before a City Council, a public official or any governmental body or governmental official, I remind you that some of the parties contend that any conversations with governmental officials, any lobbying for the passage of legislation that occurred in this case was protected activity.

The Constitution ensures the right of all persons, whether acting individually or in concert to petition government for political action. Recognizing that persons in the exercise of these Constitutional rights naturally will petition government for political action that is favorable to their particular interests, and unfavorable to the interests of others. The Supreme Court has declared that this right to petition government for political action is paramount, and that the concerted effort of various parties genuinely to influence public officials does not in any way violate the antitrust laws regardless of intent or purpose. Joint efforts truly intended to influence public officials to take official action do not violate antitrust laws, even though the efforts are intended to eliminate

competition, unless one or more and listen to this carefully, they do not violate the antitrust laws unless one or more of the public officials involved was also a participant in the alleged illegal arrangement or conspiracy.

Let me put it another way. It is perfectly lawful for any and all persons to petition their government, but they may not do so as a part or as the object of a conspiracy. Remember, a conspiracy being an agreement between two or more persons to violate the law, or to accomplish an otherwise lawful result in an unlawful manner.

Now, I got a lot more to say to you about that exception, but I doubt even if I talked the balance of the day I would say anymore than I already said about the right of the citizen to petition his government. That is a right that is in the Constitution. That is a pretty easy one for all of us to understand because we are members of the voting public.

I have been talking one hour and looking at how far I got to go I cannot promise you that I will take less than another hour, but I will try and come in in less than another hour. I may talk no more than another 40, 45 minutes. Don't hold me to that. It may go to 50 minutes or it may go to an additional hour. Do you want a little break now?

THE FOREMAN: Let's go.

THE COURT: All right, we will keep going. Do you want to stand up and stretch your legs?

(The jurors stand up and stretch).

THE COURT: I apologize for the length of the discussions. I told you the other day I wouldn't be filibustering. I hope you agree. I am not filibustering. Everything I say is important to this case.

I instruct you that a citizen's communication with a public official even if that official thereby is influenced to favor the constituent is part of the legislative process and cannot violate the antitrust laws.

So the Constitution and laws of our country protect the rights, rights of the people to petition or lobby their government officials for favorable political actions.

We may assume that persons seeking political action do so to further their own interests. There is nothing illegal about this even when one seeks action which is intended by that person to be in that person's own advantage.

This protection of the citizen fails, however, when one or more of the public officials joins in an illegal agreement or conspiracy with the person seeking the political action.

Now, I have given you earlier the burdens of proof. The burden is on the Plaintiff to prove the existence of a conspiracy and the participation by these Defendants in that conspiracy.

If this were a criminal case, I would tell you that a defendant is presumed to be innocent, and that the burden is on the Government to prove that person's guilt by proof sufficient to convince the jury beyond a reasonable doubt of that person's guilt.

The presumption of innocence also prevails in civil cases, but in a civil case it may be removed not by the standard that is necessary in a criminal case, that being the standard of proof beyond a reasonable doubt, but may be removed by the standard that prevails in civil cases, that being the preponderance of the evidence.

I may be making the Court parties angry. I am skipping over some because when I see something I already said to you, I am not going to say it again. I think we are doing pretty good so far.

I think it boils itself down to this. I am talking about that circumstance under which the governmental exception applies, that is to say, where a party petitions his governmental officials to do something, and the exception that provides that that conduct does not violate the antitrust law, that is an exception that is recognized in the antitrust laws.

So if by the evidence you find that that person involved in this case procured and brought about the passage of ordinances solely for the purpose of hindering, delaying or otherwise interfering with the access of the Plaintiff to the marketing area involved in this case, that is to say, Richland and Lexington Counties, and thereby conspired, then, of course, their conduct would not be excused under the antitrust laws.

So once again an entity may engage in a legitimate lobbying committee to procure legislative even if the motive behind the lobbying is anti competitive.

If you find Defendants conspired together with the intent to foreclose the Plaintiff from meaningful access to a legitimate decision making process with regard to the ordinances in question, then your verdict would be for the Plaintiff on that issue.

In that second cause of action the Plaintiff, you will recall I told you, accuses the Defendants of monopolizing, attempting to monopolize and conspiring to monopolize.

Two of these concepts apply to one of the Defendants, Columbia Outdoor Advertising. So the Plaintiff contends that Columbia Outdoor Advertising Company monopolized the market or attempted to monopolize the market.

The Plaintiff says with respect to the two Defendants, that they conspired together to monopolize the market. This account in the complaint comes under section 2 of the Sherman Act. I have read to you section 1 already in connection with count one of the complaint.

Section 2, which is set forth in 15 United States Code Section 2 provides that every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations shall have violated the provisions of antitrust laws. That is not a direct quote. I omitted something that did not apply and I simply stated for you that that is a violation of the law.

So we have the words "monopolizing" and "conspiring" and attempted to monopolize interstate trade and commerce. These charge a violation of section 2 of the Sherman Act act.

The word "monopolize" means the power either to obtain or maintain the power to remove or exclude competitors from a certain field of competition in a particular business or industry. The specific evidence bearing—Let me see now. I am going to leave out some of this.

I think I can approach this one in a better way than I was about to do so. Let me shift gears and give you another approach to it. Well, I am going to read you a part of it anyway.

An important factor in considering the question whether a party has monopolized is the share of a particular product market which is held by the Defendant.

The law says that when one company has more than 60 or 70 percent of a given market, the amount isn't precise, that company may well have monopoly power. However, a 60 or 70 percent share is not so high that it necessarily proves the existence of monopoly power. Therefore, other factors which we will describe to you shortly must also be considered to determine whether a company with such a market share actually has monopoly power.

If a company approaches a higher percentage of the particular market, this becomes strong evidence that the company possesses monopoly power, while a company with significantly less than 60 percent share of the market is extremely unlikely to possess monopoly power. In the range between 70 to 90 percent market share, the market share becomes a stronger indication of monopoly power as the share increases.

Another factor to take into account is the number and size of the competitors within the market before a complaining party such as the Plaintiff here enters that market.

If these are proven to be weak and small so that they do not offer substantial competition to the party claiming to possess the monopoly power, this would tend to suggest that the party alleged to have monopolized indeed does have monopoly power.

On the other hand, that party, the party allegedly possessing the monopoly, that party's competitors before the plaintiff entered the picture have been shown, if they have been shown to be strong and vigorously competitive, you should take that into account as tending to support the conclusion that the Defendant party does not have monopoly power.

In addition you should consider whether the markets involved are becoming more or less competitive. Are other companies entering the particular market? Is the number of competitors declining? Increasing competition may suggest the absence of monopoly power, while decreasing competition might suggest that monopoly power exists.

We are to consider what monopoly means under the Sherman Act, which is not the same thing as its usage in loose or popular speech.

Large size alone is not monopoly, or monopoly power. At the same time, however, the size of a company, whether in absolute terms or in comparison to the competition it faces, is one factor you can consider among others in determining whether it has monopoly power.

Whatever it would mean literally from its Greek derivation, monopoly does not mean total control of the market, or total absence of competitors.

In most cases where there is an issue worth consideration, and in this particular case the alleged monopolist has at least some competition in the relevant market. Whether the Defendant should be found to have monopoly power within the meaning of the law depends on the relative strength or weakness of the Defendant measured against the relative strength or weakness of its com-

petitors. This, as you will see, involves a careful analysis of a number of factors.

So here the Plaintiff alleges that the Defendants have violated Federal antitrust laws by monopolizing and conspiring and attempting to monopolize interstate trade or commerce in the outdoor advertising industry.

The term "monopolized" as used in the Federal antitrust laws means the power either to obtain or to maintain, the power to remove or exclude competitors from the field of competition in a particular business or industry.

In this case the Defendants have monopolized—Let me start again.

Remember now only one of the Defendants can be found to have monopolized or to have attempted to monopolize. However, with respect to the concept that the two of them conspired to monopolize, then, of course, both may, if the evidence convinces you by the preponderance thereof, may be deemed to have conspired to monopolize.

So in this case a Defendant may be shown to have monopolized within the meaning of the antitrust laws if it appears from a preponderance of the evidence that;

One, on the question of conspiracy, that the two of them have knowingly combined or conspired either to obtain or to maintain the power either to remove or to exclude or keep out competitors from the field of competition, in this case particularly as it relates to this Plaintiff.

Two, that they possess the necessary power to remove or exclude.

Three, that they have the intent to exercise their power to remove or exclude.

Of course, if the power to remove or exclude competitors has been exercised, and if as a result of the exercise of such power one or more competitors, in this case this Plaintiff, have been removed or excluded, some actual monopolization has already occurred.

So to find that monopolization has occurred you have got to find that actually the elements that I have given you have actually come about. Remember now, you got to find that from the preponderance of the evidence. This finding could only be made against the Defendant, Columbia Outdoor Advertising.

On the other hand, if it actually hasn't come about but has been planned or conspired among two or more people to have come about, then, of course, you may turn your attention to both Defendants and see whether the evidence convinces you by the preponderance thereof that both of them come within this category.

So monopolization may be found to exist whenever it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred.

Now, to attempt to monopolize the cause of action as it relates to the allegation that a party has attempted to monopolize, and this statement applies to the Plaintiff's allegations against Columbia Outdoor Advertising, has two essential elements.

One, a specific intent to monopolize.

Two, some act or acts done in furtherance of an attempt to monopolize, which although insufficient to actually produce monopoly power, creates a dangerous probability that monopolization will occur. Note, I said "probability." I did not say suspicion or possibility. It has to go a little further and say probability.

In order to find an attempt to monopolize both elements, the intent and the act or acts must appear and act together, and together they must result in a dangerous probability that the Defendant will achieve a monopoly of the relevant market.

It is not necessary, however, in order to constitute an attempt to monopolize that the Defendant's actions actually succeed in achieving or maintaining monopoly power.

With reference to the offense of conspiracy to monopolize, it is necessary for the Plaintiff to prove by a preponderance of the evidence that;

One, there was a conspiracy.

Two, that the object and purpose of the conspiracy was to achieve monopoly power.

Three, that there was a specific intent to injure the Plaintiff as well as competition.

Now, I have already defined for you the meaning of a conspiracy in our discussion of section 1 of the Sherman Act. That definition is applicable here. However, unlike section 1, a conspiracy to violate section 2 must be a conspiracy to obtain monopoly power, that is, the power to exclude competition rather than to merely restrain competition, as is the case in section 1.

For the offense of conspiracy to monopolize as with the offense of attempt to monopolize, it is not necessary to demonstrate the goal of getting or keeping monopoly power has been achieved. A conspiracy or combination to monopolize requires the same proof as does an attempt to monopolize, except that plaintiff must prove that there was a conspiracy or combination of two or more persons whereas an attempt to monopolize may be the result of independent and individual action.

I instruct you that the relevant market to the extent you got to direct your attention to the concept of relevant market here is two fold. It has to do for your purposes with the outdoor advertising industry and geographically includes the area of Richland and Lexington Counties.

Now, the power to control prices and exclude—By the way, monopoly power also has to do with price control, the power to control prices, but that is not involved in this case.

Every company can, of course, set its own prices. That has nothing to do with our case.

I am skipping over that one entirely because it talks about price controls only.

This is what I was trying to get to. The law defines the power to exclude competition, and this, too, is within the concept of monopoly power, as the ability to remove competitors from the particular field of business in which the Defendant operates, or the ability to prevent new companies from entering the field.

The Plaintiff must prove that the Defendant had the power to drive a competitor out of the advertising market, the outdoor advertising market in the Richland and Lexington Counties area. The question is whether Columbia Outdoor Advertising Company had the power to do this. That is a question for you to decide. Remember, this is an essential element. If you do not find monopoly power, the Plaintiff's charge of unlawful monopolization must be decided in the Defendant's favor.

You will want to review a series of factors on which you have heard evidence and argument to decide whether the Plaintiff has proved the element of monopoly power. I am going to review a number of those factors in just a moment. I don't want to review too much because the clock is moving along.

You have got to find that the Defendant had the power to exclude competition or to maintain a monopoly that has been—That has come into existence lawfully or through other means including that of historical accident. This does not mean that you up must find that such power was absolute. That is to say that a defendant had no competitors whatsoever.

On the other hand, if you find that Defendant's power to do these things was not substantial, you must conclude that it did not have monopoly power.

It is for you to decide whether the evidence indicates that Columbia Outdoor Advertising was able to exclude competition or control prices to a substantial or significant degree.

Now, in this regard, you may consider all of the evidence that has been presented, the percentages of the market share that the parties have. You study in this

connection the trend of market shares, declining market share. Market share that has been increased over the years, may be evidence in an opposite direction.

You may consider that extra ordinarily large profits and a high rate of return enjoyed over a long period of time may reflect wholly lawful forms of competitive development, even superiority or length of time in the market.

Once again you must balance the competing arguments and resolve conflicts in the evidence. Take into account the evidence presented which tends to show that a company's success and profits were not because of monopoly power but because of its experiences and the quality of its service, the length of its time on the market. This is a subject on which you have heard much evidence and much argument. I merely remind you of your task in this respect. In the final analysis, you are the fact finders on this issue.

Monopoly power does not exist in a vacuum. If it exists, it must be found to exist in the relevant market. I already told you that the relevant market is a product market. It is a geographical area. I defined those for you.

We are to consider what monopoly means under the Sherman Act, which is not the same thing as its usage in loose and popular speech. Large size alone is not monopoly or monopoly power. At the same time, however, the size of a company is one factor you may consider among others in determining whether it has monopoly power.

Monopoly does not mean total control of the market or total absence of competitors.

If you find that a company's alleged monopoly and its maintenance was the result of its superior skill, foresight or hard work, then that would not be—Those facts standing alone and not through a deliberate unlawful effort to exclude others from the market, then, of course, you couldn't find for a Plaintiff.

You may find that the alleged monopoly and its maintenance was the result of historical accident. Historical

accident. The tongue starts going together after you have been talking so long.

That is without having intended to either put an end to existing competition or to prevent competition from arising where none had existed. A party may, nevertheless, develop a natural monopoly. That wouldn't be in violation of the law. The market may have been such that no other outdoor advertisers were interested in developing a business in the market.

A party does not violate the antitrust laws simply because its acquisition or maintenance of a monopoly was thrust upon it through these factors, or by market conditions.

Therefore, if you find that the acquisition or maintenance of Columbia Outdoor Advertising Company's alleged monopoly was the result of such historic accident, this would not be a violation of the law.

In order to succeed on its claim of attempted monopolization, the Plaintiff must also prove—I think I have given up the essence of this one. Let me see if I have. Yes, I have. I was about to read you a page and a half of something I had already given you. Where I can avoid doing so—

Once again, the relevant market includes the outdoor advertising business and the geographic aren involved in this case, Richland and Lexington Counties.

I previously said, or if I have not I tell you now, the City of Columbia cannot be held liable for the offense of monopolization. The City cannot in this context monopolize, or attempt to monopolize.

You direct your attention on the issue of monopoly only to the allegation that the two parties conspired to monopolize. You may go further if you find that monopolization has been exercised by Columbia Outdoor Advertising or that it has attempted to monopolize, then you may assign culpability to that Defendant on those two concepts. There are three concepts in the monopoly cause of action. Monopolization, attempt to monopolize,

you can consider only conduct as it relates to Columbia Outdoor Advertising on these; and conspiracy to monopolize, you may consider the conduct of both Defendants on that issue.

We are coming along pretty good. I think I will keep my promise to you. I think I ought to be through with these about 3:00 o'clock, somewhere thereabouts.

In another of the counts to this complaint the Plaintiff alleges that the Defendant, Columbia Outdoor Advertising Company, has engaged in one or more unfair trade practices against this plaintiff.

The South Carolina legislature has enacted a statute which prohibits unfair trade practices. I will read it to you from the statute itself. I had it a moment ago. I don't have it now. Anyway the statute reads, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

For your information, as I said, that is the statutory law of the State of South Carolina.

A trade practice is unfair when it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

Unfairness in competition is similar to unfairness in any field of sports. That which violates the rules of the game is properly labeled unfair. Basically competitors are expected by the law to put forward for customers the opportunity to the customers to judge freely the quality, price and service each offers, as the product of its own effort and skill, without any violation of noncompetitive legal obligations. Thus the Court's have condemned certain activities as unfair trade practices. Disparagement, the use of false or disaparaging statements aimed as destroying a competitor's good will. That being either his personal reputation or that of his product, commercial stability, credit rating or relations with customers, suppliers, laborers and the like, grant of promises or benefits.

The customer should be affected only by the quality, price or service of the competing product. Any attempt to influence him by bribery or the granting of undue advantage is an unfair trade practice. That, of course, I say very guardedly. You know companies every day are offering trips to Bermuda, and, of course, lower interest rates and whatever have you, buy one get one free. All kinds of gimmicks are offered. These have all been found to be perfectly lawful conduct.

Misrepresentation or misbranding. If a company represents to potential customers that something is not true thereby injuring another party, then, of course, an unfair trade practice has come into being.

Other unlawful conduct in business. This is involved the charge that a Defendant has gained an unfair competitive advantage by violating some law in its business activities.

You heard me mention some terms a moment ago. I suspect they were terms well known to you. I mentioned to you a trade practice is unfair when it offends established public policy, is immoral, unethical, oppressive, unscrupulous or substantially injurious to its customers.

Immoral, I suspect everybody knows what immoral means, but let's talk about it anyway. It means inconsistent with purity or good morals, contrary to conscience or moral law.

Unethical means not conforming to approved standards of behavior, a socially acceptable code or professionally endorsed principles and practices.

Oppressive means unreasonably burdensome, unjustly severe, rigorous, harsh.

Unscrupulous means unprincipled, have no moral integrity.

Injurious means inflicted or intending to inflict injury, intending to harm, damage or impair.

An unfair trade practice is an act which tend to deceive, and in fact does deceive consumers. The act must offend established public policy—I was about to say immoral, unethical. I already told you that one before.

To prove an unfair trade practice it is not enough for the Plaintiff to show that the Defendant was negligent or incompetent in the conduct of its business.

Negligence or inattention is not the kind of deceptive or unfair practice the law was intended to reach.

I have talked about the three causes of action that the Plaintiff alleges against the Defendanta. I am going to talk to you now about a couple of other matters and I am winding down. Doing pretty good. I would be in trouble if this were Sunday morning and you were in the First Baptist Church.

For the Plaintiff to recover damages it is not enough to show that the Defendant violated the antitrust laws, but Plaintiff must also establish by a preponderance of the evidence that the violation of the antitrust laws was the proximate cause of the injury or damages to its business. An injury or damage is proximately caused by an act or failure to act whenever—

Well, proximate cause just means the direct cause. It is the legal cause. It is normally considered the cause without which the injury or damage would not have occurred. So an injury or damage is proximately caused by an act or failure to act whenever it appears from the evidence in the case that the act or omission placed a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

Injury differs from damages, which are the means of measuring the extent of injury in dollars and cents. Plaintiff's burden of showing injury is met if it has shown some dangers from the unlawful act or acts complained of.

Inquiry beyond this minimum point goes only to the amount of damages and not to the question of injury. It is enough that the Defendant's unlawful acts materially contributed to the Plaintiff's injury even though you may find that some other factors may have also contributed.

Plaintiff is not required to show that the Defendant's acts were the sole cause but only that it was a contributing cause to any damage or injury suffered by the Plaintiff.

In considering the whole question, you must look to the evidence as a whole. You must not isolate of compartmentalize the various factual aspect of the case. The Plaintiff need not have engaged in futile gestures or exhausted every possible avenue to avoid the effects of the Defendant's acts but may recover from any injury to which unlawful acts of Defendant materially contributed.

If you find that Plaintiff has shown that the Defendant violated the antitrust laws in such a fashion as would, as did cause injury to this plaintiff, and that such injury did occur, you may find for that the violation contributed to the cause of the injury.

Now, the purpose of damages in an antitrust suit is to put the Plaintiff—And this is true with respect to the unfair trade practices claim also. Is to put the Plaintiff in as good a position as that Plaintiff would have been in had not the violation or violations occurred. I am talking now about damages, really, because that is what damages is. We are talking about actual damages meaning to compensate. Compensable damages means to compensate. To restore the injured or damaged party to the position that party was in or would have been in absent the damage or injury.

If you decide for the Plaintiff on the question of liability and injury, you must then fix the amount of money which will reasonably and fairly compensate the Plaintiff for its damages.

Antitrust damages, while not limited in kind are generally of two types. It includes loss profits and the loss capital value of its business operation, if any.

Now, if you should find from a preponderance of the evidence in the case that damage to Plaintiff's business and property, such as a loss in the profits, was proximately caused by the Defendant's alleged illegal conduct

complained of, then the circumstances that the precise amount of Plaintiff's damages may be difficult to ascertain should not effect the Plaintiff's recovery. Particularly if the Defendant's alleged wrongdoings have caused the difficulty in determining the precise amount.

On the other hand, the Plaintiff is not to be awarded purely speculative damages. That is another way of saying that the Plaintiff is required to prove its damages by the preponderance of the evidence.

Now, the Plaintiff is not required to prove its damages to a mathematical certainty, but it must prove, it must offer proof which will enable you the jury to arrive at an amount which will be fair, just and proper.

An allowance for lost profits may be included in the damages awarded when there is some reasonable basis in the evidence in the case for determining that plaintiff has in fact suffered a loss of profits, even though the amount of such loss is difficult of ascertaining.

I charge up that a party is entitled to sue and recover damages under the antitrust laws only if it in fact has suffered a legal injury. That is to say, if it has been injured in its business or property by reason of anything forbidden by the antitrust laws; or turning your attention down to the Unfair Trade Practices Act, that a party has done something that is forbidden by the Unfair Trade Practices Act.

A party to recover must not only demonstrate by the preponderance of the evidence a violation of the particular law in question, antitrust law on the one hand, unfair trade practices on the other, but also that those violations actually caused injury to the Plaintiff's business or property.

If you should find from a preponderance of the evidence in the case that the Plaintiff is entitled to a verdict, the law provides that the Plaintiff is to be fairly compensated for all damage, if any, to its business and property which was proximately caused by the Defend-

ant's conduct in violation of the principles that I have outlined.

In arriving at the amount of the award, you should include any damages suffered by the Plaintiff because of lost profits and by reason of the diminution of its business enterprise.

If you should find from a preponderance of the evidence in the case that damage to the Plaintiff's business and property was proximately caused by the Defendant's illegal conduct complained of, then the circumstances that the precise amount of Plaintiff's damage may be difficult to ascertain should not effect the Plaintiff's recover, particularly if the Defendant's wrongdoings have caused the difficulty in determining the precise amount.

On the other hand, the Plaintiff is not to be awarded purely speculative damages. In allowance for lost profits —correction.

An allowance for lost profits may be included in the damages awarded only where there is some reasonable basis in the evidence in the case for determining that plaintiff has in fact suffered a loss of profits, even though the amount of such loss is difficult to ascertain.

I have tried not to repeat myself, but I feel I have on occasion done so.

Lost profits means net profits and are determined by subtracting the costs and expenses of business from its gross revenues.

You are instructed that you may consider in determining whether or not any part of a Plaintiff's damages constitute loss net profits, any past earnings of the Plaintiff in the business in question, the uncertainty which makes the success of a business problematical, the experience of the Plaintiff's officers, the competition which the Plaintiff would have had in the area and the general market condition in that area.

It is a principal of the antitrust laws that a person faced with an unlawful injury which is capable of injuring his property may not sit idly by and allow damages

to accrue. He must do what he reasonably can both to avoid and reduce the amount of damages. If a plaintiff fails to mitigate, that is, to reduce this damages to the extent he reasonably can, he may be prevented from recovering some or all of this damages even though those damages resulted from an unlawful arrangement. If you find that the Plaintiff failed to mitigate its damages, you must reduce any computation of damages you arrive at by the amount of its failure to mitigate.

I instruct you that damages for loss of a going concern value cannot be recovered unless the Plaintiff's business has been terminated or sold in a forced sale. Inasmuch as the Plaintiff's business has not been terminated or sold loss of a going concern value may not be recovered by the Plaintiff in this case.

Now, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should or should not prevail in this case.

I have neglected to give you one or two more instructions before I get to that point. Let me see if I can't put them in some context.

You will note that the verdict forms which I will give you in a moment does not set forth every dollar verdict which you may return.

I am going to skip this one. I think I can state it to you better.

I do say to you that on the question of damages that the Plaintiff claims its losses are composed of three parts. You will only get a line on the verdict form which will invite you, if you find for the Plaintiff, to return a dollar amount which you yourselves will compute and fill in.

The Plaintiff suggests that amount should include the following three components. Direct out of pocket expenses, lost profits, devaluation of its business.

If you find that these claimed losses or any losses resulted from the conduct of the Defendants, then your

verdict will be in favor of the Plaintiff with an assessment of damages, as is proved by you—As is proved to you by the evidence in the case. Now, you will follow the forms I will give you in a moment.

On the other hand, if the Plaintiff has not proved its damages or if the Plaintiff has not proved that the Dedefendants have violated any of the legal principles that I have outlined to you, you will return verdicts for the Defendants on those claims.

I may be offending some party but I am excluding some things at this point because I think I already covered them.

As I started to say to you a moment ago, the fact I gave you instructions concerning Plaintiff's damages should not be interpreted in any way as an indication that I believe the Plaintiff should or should not prevail.

Your verdict should represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous. I say verdict singular. You will see in a moment that you are being invited to return several verdicts because there are three separate causes of action.

Now, it is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgments. Each of you must decide the case for yourself but only after an impartial consideration of all the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if you can do so without violence to your conscience, but do not surrender your honest convictions concerning the weight or effect of the evidence solely because of the opinion or opinions of your fellow jurors, or indeed for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges. Your sole interest is to seek the truth from the evidence that has been presented.

Now, I have had prepared for your use some forms, some verdict forms on which you will record your verdict. I came in just a little beyond the two hours. Pretty good estimate though, wasn't it? I hope I haven't bored you.

Take these verdicts in with you. First of all I have written out some special interrogatories. These merely ask you to answer my questions yes or no.

Mr. Foreman, would you just look at these first, please. An interrogatory is a question.

My first question is, "Do you find that the Defendants, Columbia Outdoor Advertising, Incorporated, and the City of Columbia, conspired in restraint of trade against the Plaintiff, Omni Outdoor Advertising, Incorporated?" Do you find that? And down here I got a "yes" and a "no." Answer that question for me, please.

Now, remember any finding that you make must be a unanimous one. If your answer is "yes," just put me a check mark next to "yes." If your answer is "no," put me check mark there, please. Then turn the page. There is another question over here. This one has—The first one has to do with count one on conspiracy in restraint of trade under section 1 of the antitrust laws. Turn the page and this one has to do with count two on section 2 of the antitrust laws.

Do you find—You see I need your answer to this one because you see, remember, there are three prongs to this one. Plaintiff says Columbia Outdoor Advertising monopolized and it attempted to monopolize. The Plaintiff also says that both Defendants conspired to monopolize. So I need to know from you with respect to the concept of conspiracy, did they conspire?

This question is, "Do you find that Defendants, Columbia Outdoor Advertising, Incorporated, and the City of Columbia, conspired against the Plaintiff, Omni Outdoor Advertising, Incorporated, to monopolize the outdoor advertising market in Richland and Lexington Counties?" That is a question. Please answer it "yes" or "no" for me, and then you sign it, Mr. Foreman.

Now, having answered those questions you turn your attention, please, to the verdicts that I have had prepared for you. I am asking that you return separate verdicts as to each of the three causes of action. I have clipped your alternative, the options for you together.

As to count one, and its got count 1 right up there under the word "verdict." It says, if you find, for example, on the conspiracy and restraint of trade cause of action that the Plaintiff has not established its case by the greater weight or the preponderance of the evidence —I am just about through now, is everybody all right? This won't take but a couple little seconds or a minute. I know I had you a long time and I apologize. I am about through. I am about ready to send you into your room.

If you find that the Plaintiff has not by the preponderance or greater weight of the evidence established that these Defendants conspired against this Plaintiff in restraint of trade, you return a verdict for the Defendants. In this regard I have got a form here. Actually I got two forms here. It says, "We, the jury, unanimously find"—Wait a minute. I picked up the wrong group.

It says, "We, the jury, unanimously find for the Defendant Columbia Outdoor Advertising Company, this —— day of January, 1986."

For your information it is still January, today being January 30. Tomorrow, if you don't reach the verdict today, being January 31st. Anything after that we will have to change and write in February.

Let's see. On that one you have got—I will put them together for you. There is also one here that says, "We find for the Defendant, City of Columbia." That is if the Plaintiff has failed to prove its case against the Defendants on the question of conspiracy, you would return verdicts for the Defendants on that count.

I have got two forms here. Bring me two verdicts. One for Columbia Outdoor Advertising and one for the City of Columbia. I have got them bracketed together.

Then, of course, in the event your verdict is that the Plaintiff has made out its case against the Defendants on the question of conspiracy, you return a verdict for the Plaintiff.

Now you return your two verdicts for this reason. You will return monetary damages only against the Defendant, Columbia Outdoor Advertising Company. You will not return monetary damages against the City of Columbia. But you, nevertheless, will return two verdicts.

As to the one concerning Columbia Outdoor Advertising Company, your verdict will read, "We, the jury, unanimously find for the Plaintiff, Omni Outdoor Advertising, Incorporated, against the Defendant, Columbia Outdoor Advertising, Incorporated, the sum of ——— dollars, this —— day of January, 1986."

Please use both words and figures just as you would if you were making out a check. You sign it, Mr. Foreman. You see that it wouldn't be practical to ask all of you to sign it. So I ask only the Foreman to sign it. Mr. Foreman, you don't sign it until and unless the verdict therein expressed the unanimous verdict of all.

Now, you also having found that the Plaintiff has made out its case of conspiracy, would return a verdict against the City. This one reads, "We, the jury, unanimously find for the Plaintiff, Omni Outdoor Advertising, Incorporated, against the City of Columbia, this —— day of January, 1986."

This one doesn't contain a monetary amount. You see in the event you return this verdict, I will take action, appropriate action against the City, which will not include a monetary amount, but it would include other action by the Court against the City.

All right. I have said I am putting these two together. I hope you are understanding me, Mr. Foreman.

THE FOREMAN: Yes, sir.

THE COURT: Turning my attention now to count two. If you find that—This one is on monopoly now. It

is on monopoly, attempt to monopolize and conspiracy to monopolize.

If you find that the Plaintiff has made out its case against the Defendant, Columbia Outdoor Advertising Company, and against the City of Columbia on the question of conspiracy.

Now, remember the City is included only on the conspiracy aspect of monopolization. And if you further find that the City (sic) has made out its case on monopoly, and/or attempt to monopolize against Columbia Outdoor Advertising Company, you will return verdicts for the Plaintiff. I have got your form here.

The form says, "We, the jury, unanimously find for the Plaintiff, Omni Outdoor Advertising Company, against the Defendant, Columbia Outdoor Advertising, Incorporated, the sum of —— dollars actual damages this—— day of January, 1986."

In that event, having also found conspiracy, you would also find a verdict against the City of Columbia, but you would not return a monetary amount.

If you find that the City—I am sorry. If you find that the Defendant—Correction again.

If you find that the Plaintiff has not made out its case by the preponderance or greater weight of the evidence on monopolization or attempt at monopolization or conspiracy to monopolize, please bring me back two verdicts. One for the Defendant, Columbia Outdoor Advertising Company, and one for the City of Columbia.

Now, I got all of these pinned together. Going now down to count eight of the complaint. This one is on unfair trade practices. This one has to do only with Columbia Outdoor Advertising Company. If you find that the Plaintiff has not by the greater weight or the preponderance of the evidence made out its claim against the Columbia Outdoor Advertising Company, bring in a verdict for the Defendant.

If you find that the Plaintiff has made out its case against this Defendant on its unfair trade practices claim, bring in a verdict for the Plaintiff.

I have two verdict forms here for you. One says, if it has not brought in—If the Plaintiff has not made out its case, it says, "We, the jury, unanimously find for the Defendant, Columbia Outdoor Advertising Company, on this day."

If you find that the Plaintiff has made out its case by the preponderance or greater weight of the evidence, I got your form here. It says, "We, the jury, unanimously find for the Plaintiff, Omni Outdoor Advertising Company, against the Defendant, Columbia Outdoor Advertising, Incorporated, the sum of —— dollars." Again using words and figures. "Actual damages this —— day of January, 1986."

If during your deliberations you desire to communicate with me, please, Mr. Foreman, reduce your message to writing. Put your question, if you have a question in writing. You sign it, please. Pass it out to the Marshall who will bring it to me. I will answer you as soon as I can. Sometimes I can write you a note. If your question is such that I can do it, I will do that.

If instead I must speak with you orally, for example; if you want to hear some item of testimony read to you, I will have to ask our court reporter to find that item of testimony, or if you want some instructions read to you again, I will have to locate that instruction. I will have to interact with the lawyers in your absence before I bring you out.

So if you send me out a note, don't think we are out —I will go into operation immediately. It may take me some time to send for you because I have to confer with them before I bring you out. We won't be out here just twiddling our thumbs. I will go into immediate operation. I will then have you brought into the courtroom and I will instruct you on that.

If you do write me a note, please don't tell me how you are numerically divided at that time. That is your business. Now, I am going to ask you to go into your room.

You see in your absence I have to discuss with the lawyers the adequacy of these instructions. If it develops that I have created some kind of a misapprehension because I have erroneously stated some principle to you, or if I have erroneously omitted some instruction that I ought to have given you, I would then have to ask you to come back, and I will have to try and remove that misapprehension.

In the unlikely event that these instructions are deemed to have been adequate, I will then ask you, Mr. Foreman, to return and we will pass the verdict forms and the exhibits. You are going to need wheel barrels and whatever to get these into the jury room. You carry all the exhibits into the room with you, and then you may commence your deliberations.

When you are ready with your verdicts, knock on the door and let us know you are ready. I will have the parties assembled, and I will bring you into the courtroom and you may announce your verdict.

This late in the day you got hundreds of pieces of evidence to review. I don't know whether you will reach a verdict quickly or whether you will need a lot of time. You may need into tomorrow to reach your verdict. If that be the case, I will at a reasonable hour inquire on your progress. I will inquire whether you want to go out to dinner or whether the circumstances is such you want to recess for the night and come back tomorrow. I will make that inquiry at a reasonable time. Somewhere after 5:00 o'clock. For now, please go to your room and wait for me to call for you.

(Out of the presence of the jury).

THE COURT: Are there any exception or requests for additional instructions on the part of the Plaintiff?

MR. CHASTAIN: Your Honor, we appreciate the complexity of the case, the lengthiness of the effort you had to go through. I admire it. I do have a couple of things that I feel I need.

THE COURT: Never had a moments doubt.

MR. CHASTAIN: Your Honor, we believe we would have to except in your monopolization charge and the fact you omitted that there is a presumption or prima facie case or very strong evidence of the existence of a monopoly when there is a 90 percent market share. You did say when there was a high percentage market share.

THE COURT: I did some paraphrasing right there. I departed your written instruction and I said the higher it goes the greater the likelihood. I think that is pretty fair paraphrasing.

MR. CHASTAIN: It is since they admit they had 95 or 100 percent we kind of like the 100 percent.

Your Honor, I am looking down at my notes.

THE COURT: I apologize to you. I mixed them up. I grouped them topically.

MR. CHASTAIN: I thought you did a good job of mixing them up, your Honor. It made it interesting in trying to follow. We, of course, maintain our continuing objection to the view that the City may not monopolize. Of course, you gave specific instructions to that affect. That is simply in the maintenance of our standard view of that position.

Your Honor, I think in your instructions with regard to the verdict form you probably covered this. I have down here a note to except to the failure of giving our proposed jury instruction B

THE COURT: I did. As I was about to read it to the jury, and I had at that point been going right at two hours I perceived I could come in and do the essence of what you were asking me to do. So I did the substance of that I am fairly well certain. Do you except to my failure to read yours verbatim?

MR. CHASTAIN: No, your Honor, I do not.

We do, however, except with regard to our proposed instruction F. Your Honor read the substance of the first part of that but did not read the last part, particularly the burden of proof aspect with regard to the

Noeer-Pennington exception. Of course, your Honor to place on the record the whole Noerr-Pennington issue—I believe it is on the record but for the sake of completeness, we believe Noerr-Pennington should not be in the case on the ground the City has no Parker immunity. Therefore, COA cannot immunize itself from liability for its acts by petitioning an entity which it cannot undertake such acts. Petitioning the City is not like petitioning the state. I am simply saying when you petition the state that is one thing, but the City has no Parker immunity in this case.

THE COURT: I thought I was talking about the right of the citizens to petition their government. That is true not only with state Government but it is true with respect to municipal government.

MR. CHASTAIN: However, your Honor, that is our exception. We believe in the absence of Parker immunity the petitioning the City to take anti-competitive action is just like going over and asking Donrey or somebody else to take adequate competitive action.

THE COURT: I may have erred there. I don't know.

MR. CHASTAIN: We do except to that and we believe that is not proper. The whole Noeer-Pennington exception does not exist in this case. Subject to that within the Noerr-Pennington exception being given we feel your Honor did not give the second half of our instruction F on genuine activity. On the other hand, your Honor did cover it elsewhere. We felt it would be desirable to have a succinct statement. You covered it in the overall instruction. If I could sit down and read them all, I might be thorough. I simply wanted to place on the record we felt F should have been covered.

With regard to E, our proposed jury instruction E, your Honor, we do except to that, the failure to read that, in that it did not—Your Honor's instructions did not cover specifically that an individual could be conspired with by COA and they could return a verdict against COA.

THE COURT: I recognize I did not give that. I think my having declined to give it was a proper decision because I viewed the evidence as it relates to the Mayor and City Council as having accused them of having taken action in their official capacities only instead of in their individual capacities. That was my reasoning. I readily appreciate that I diverted from your view in that case.

MR. CHASTAIN: Yes, sir. I understand. I just need to place it on the record.

THE COURT: Yes.

MR. CHASTAIN: Your Honor, if I can briefly look here. In your instructions, you did give the substance of Defendant's request to the charge number five. We do respectfully except to that in that we believe it places a greater burden of proof on the Plaintiff than is entirely commensurate with the rest of the instructions.

THE COURT: All right. I try to always remind them and I made a point to remind them periodically that the Plaintiff's burden was proof by the preponderance of the evidence or the greater weight.

MR. CHASTAIN: You did, sir. And upon reviewing the whole record that would be cured. You did give number five. We had a problem with it. I felt we had to state that.

Your Honor, you edited City's number five in a manner which we found not entirely with our views but not such we need to place a formal exception on the record to it.

Finally, your Honor, I believe the issue of the mental state of the Defendants, I believe if—Again, I am like the jury I have been two hours listening to the sermon. It was a good sermon but I am not 100 percent sure I recall everything in it.

To the best of my recollection the tone of the mental state of that the Defendants was emerged from your charge as having to be pretty much one of where they needed to feel they were doing or acting wrongfully. As you know, we stuck to the idea they simply had to willfully wish to be anti-competitive. We don't feel there was

—Although we had a couple of phrases to that effect in our proposed instructions, particularly number 20-A, that was not given and we would except to that.

I believe that is it.

THE COURT: All right. Perceiving as I do that I gave the substance of those requests submitted by the Plaintiff that were proper for consideration of this case, though not always in the exact language proposed, and perceiving further that those that I did not give were not given by conscious decision not to give them, your exceptions are hereby overruled.

MR. CHASTAIN: Thank you, your Honor.

THE COURT: Columbia Outdoor Advertising.

MR. McDONALD: Your Honor, with respect to your charge on damages, you charged the Plaintiff's proposed jury instruction C and included in that the devaluation of the business. We except to that.

In plaintiff's charge number 26 you referred to two kinds of antitrust damages, lost profits and lost capital value, if any, of its business operation. We except to that.

THE COURT: That was essentially the same as devaluation, wasn't it?

MR. McDONALD: That's correct. Then you referred in another part of your charge to the fact the loss of going concern value may not be recovered. I thought that to be inconsistent with your charges that they could recover a lost capital value or devaluation of the plant. If you take the position that loss of going concern value may not be recovered, which I believe is a proper and correct position, then the charge on damages in our view should not have included loss capital value or devaluation of the plant.

Now, that takes care of that one.

In Plaintiff's instruction number 31 relating to unfair trade practices, you charged—You illustrated certain kinds of activities as being unfair trade practices and that included disparagement, a grant or promise of benefits which—

THE COURT: I had a little problem with that one as I was reading it. I was already into it and couldn't find a way out of it. I tried to get out of it by saying, you know, all merchants offer a trip to Bermuda.

MR. McDONALD: I heard you try to get out of it.

THE COURT: I don't really think I succeeded.

MR. McDONALD: And misrepresentation and unfair conduct of business. Anyway, we thought those were broad and we except to those charges.

THE COURT: My problem was you see when we were in the charge conference, you know, we had so many of these that I could not honestly tell you that I read down through that one thoroughly during the charge conference. As I was reading it today, I thought it was something that had no objections, but when I got down to that I immediately halfway in the sentence found the problem. I knew I would hear from you. I never had a moments doubt I would hear from you. Then I tried to rescue it.

MR. CHASTAIN: I thought you cured it, your Honor.

THE COURT: It was a feeble effort at best.

MR. McDONALD: If your Honor please, you gave the standard charge on damages that can't be speculative but must be enough proof for you to do what is fair, just and reasonable. It seemed to me that we were entitled to the ascertainable feature of the South Carolina Unfair Trade Practices Act and I didn't hear that given anywhere.

THE COURT: I was talking about damages in general. Of course, what I said I gather you take no issue with its application to the antitrust features?

MR. McDONALD: That is correct.

THE COURT: When I come down to the South Carolina Unfair Trade Practices you think I ought to have gone further?

MR. McDONALD: I think you should have told them what the act says about the damages. That is they have

got to be ascertainable and then describe what that means.

THE COURT: Did you give me an instruction on what that means?

MR. McDONALD: I don't know that we did. We did insist that the word ascertainable had some special meaning.

THE COURT: I remember you insisted upon that.

MR. McDONALD: We asked you to read the statute.

MR. ROBINSON: There is another section that refers back and talks about ascertainable damages.

THE COURT: Do you want me to do it?

MR. CHASTAIN: Your Honor, we think they have been adequately instructed.

THE COURT: Frankly, I think so too.

MR. McDONALD: We would like to reserve our objection for the record.

THE COURT: All right.

MR. McDONALD: I don't remember you charging even if you find there was illegal activity if you also find it didn't damage the Plaintiff, the Plaintiff couldn't recover.

THE COURT: I did that. I pointedly did that one. By that time I lost your attention. See the damage discussions started at five minutes to two, five minutes to three, I beg your pardon.

MR. McDONALD: Your Honor, I must confess I took your charge to say in one place on the business of lobbying that if the person lobbies solely to exclude the competition, that that is—I forget the words you used, not permitted or acceptable.

THE COURT: As a matter of fact, I was struggling between two groups of submissions to me.

MR. ROBINSON: Your Honor, on that subject I wrote down that COA brought about the ordinance for the sole purpose of barring access to the Columbia market and thereby conspired, then the conduct was not protected and illegal. As I understand the law, the fact that

COA would lobby to out right bar Omni is not a conspiracy, number one.

Number two, it is protected under Noerr-Pennington. Those are my notes on the subject. I felt that was bad law.

THE COURT: I think you are right.

MR. CHASTAIN: Your Honor, there was a lot of instruction back and forth on Noerr-Pennington. We got an exception on it, too. I think they had a lot of words on it. I think we had enough.

THE COURT: You see if I had just stuck with the instruction that I pointedly gave out of Affiliated Capital versus City of Houston, I believe I would have included everything that everybody could have wanted, but then I parted and tried to give them what each of you had submitted to me and that is when, of course, I ran into the thicket.

MR. CHASTAIN: Your Honor, I really thing this jury has been sitting here for three weeks. I am not 100 percent satisfied with it. I got an exception to it. They got an exception. I think we would be better off and them included if you just leave them alone on it.

MR. McDONALD: Your Honor, that gives us reversable error. If that is your choice, all right.

THE COURT: That never bothers me. That is what they are up in Richmond for.

MR. McDONALD: I didn't thing I would frighten you.

THE COURT: Not in the least.

MR. McDONALD: Nevertheless, that is our exception. We think a person can lobby for anti-competitive activities.

There is a relative market problem that we want to except to. You took that upon yourself. We thought it was a jury question.

THE COURT: All right.

MR. ROBINSON: We also think it should not be the outdoor advertising industry but the overall entire media

THE COURT: Yes. I knew I would run into problems with you there. I will have to take my chances on that one.

MR. McDONALD: If your Honor please, there were a number of charges that I didn't pick up that we requested you charge. Some of which may be covered adequately.

THE COURT: I thought I did. Here is the point. You might have seen me up here flipping pages. When I got to a point where I felt I already covered the subject properly, I then reached a decision that where you wanted a particular slant on it and I would merely be redundant to something I already said, I flipped the page and probably saved us 30 minutes in the process.

MR. McDONALD: Let me do this then, because I can't be sure that you have not paraphrased what we were saying. I would like to just read the numbers of the exceptions that as you went I pulled the sheet thinking it had not been charged as we had stated it.

THE COURT: All right.

MR. McDONALD: Number one. That is defendant number one, defendant's two, defendant's nine, defendant's 13, defendant's 15, 16, 18, 19, 21, 22, and that is it. I concede that again if I review the whole record I may conclude you had adequately charged those, but I did not hear them charged in our words. I want to protect myself upon the record.

THE COURT: All right, perceiving as I do—

MR. ROBINSON: We had discussed Plaintiff's number 21, your Honor, you were going to read from the book. Instead you read Plaintiff's 21 and neglected to insert the monopolization conduct had to be wrong or improper. We had previously discussed it. I wanted to make an exception.

THE COURT: All right. I have the impression that I said that monopolization conduct had to be for the purpose of either establishing or maintaining monopoly. I believe I covered the sense of that though not necessarily in the language that the statute may have specified.

Let me simply say that upon consideration of Columbia Outdoor Advertising exceptions that while it is possible that I went a stray somewhere along the line, and I guess I am a little concerned about the possibility that I said that lobbying itself may be a conspiracy. If I said that, I am certain that I was wrong, but if I said that activity was pursued for the purpose or in furtherance of a conspiracy, then it wasn't protected. I thought that my whole instruction on Noerr-Pennington developed that concept. If I made a misstep somewhere along the way, I think it was a misstep and in the harmless error area. I am inclined I ought to take my chances on that. Your exceptions are overruled.

MR. CHASTAIN: One thing, your Honor will recall they withdraw over our protest their request to charge number eleven at the charging conference. We like it and, of course, your Honor, didn't give it, but we would like to note an exception to it not being given.

THE COURT: All right.

MR. MEGGS: Your Honor, in an effort to save time may I adopt the exceptions taken by Mr. McDonald?

THE COURT: You may.

MR. MEGGS: Most importantly for the City was the charge dealing with, it was right at the first of the jury instructions with regard to corporations. The fact they act through their agents and employees. They may bind the corporation by their acts and statements made in the scope of their duties. That applies to the governmental agency which was also indicated as a corporate party to this litigation.

My concern is that coupled with a charge on Noerr-Pennington, I think we went from that charge to my five member council and the majority must vote to enact ordinances. Then we went to the Noerr-Pennington charge. Of course the basis of the Noerr-Pennington charge if one or more of the public officials involved conspires with the private party, the private party's protection fails.

My concern is that the jury could take those three instructions and come out with the erroneous conclusion that if they found, for example, that COA, that Mayor Finlay was acting in conspiracy with Columbia Outdoor then that made a conspiracy which bound the City of Columbia.

THE COURT: I tried to avoid that possibility. I gave your requested instruction and might have stated in addition to what you suggested that the City acts through its City Council and its elected officials.

I don't know if I said—I know there was acting pursuant to authority properly delegated to them. If I didn't, I ought to have said that. I certainly said, you know, as requested by you, how the City acts.

MR. MEGGS: Of course we offered the charge number five which indicated that—I think there was a portion of our request number five not charged.

THE COURT: I just didn't tell them how many councilmen had to vote. That is what I left out. I did tell them in 1982 there a Mayor and four members of council, and I said a majority of them had to act.

MR. MEGGS: I understand. My only concern is the situation, that there may be the erroneous impression base charge on Noerr-Pennington, one or more conspired and coupled with that initial charge on the agency situation, that there may be the erroneous impression with the jury that merely one of the five acting in conspiracy with COA would be enough to bind the City, to put the City in conspiracy with Columbia Outdoor.

THE COURT: Do you think they could do that in the face of my instruction that a majority of the members of council had to act in order for the City to do something?

MR. MEGGS: Yes, sir, because of the steps for the chronological—Because of the fashion in which they were given by that insofar as the sequence of those instructions I believe they could come down with that type of understanding. We except on that basis.

THE COURT: All right. Quite frankly I don't know I share your concern. Yet out of an abundance of precaution if you think it would help, I will be glad to tell them that.

MR. MEGGS: Your Honor, there is one paragraph in my request number five that I think would resolve the problem. That is on the first full paragraph on page three.

THE COURT: Is that a Noerr-Pennington instruction?

MR. MEGGS: The remainder of request five dealt tangentially with Noerr-Pennington. This reads, "In order to find against the City of Columbia, you must find based upon a preponderance of the evidence at least three of the members of City Council were acting pursuant to an illegal agreement with COA to enact ordinances unreasonable—"

THE COURT: I think I gave them in essence that. I substantially charged that. If it was not done in the precise language you proposed, I think, nevertheless, the substance of it was given.

MR. MEGGS: That's the exceptions we have.

MR. LEWIS: I have one point, your Honor. I am assuming—

THE COURT: The City's are overruled.

MR. LEWIS: This has nothing to do with the instructions. Earlier on you mentioned you might have wanted the jury, if they found a verdict under the unfair trade practices to let you know if it was willful in helping you determine if it should be trebled.

THE COURT: I guess I forgot to do that and nobody called it to my attention when I was putting together the interrogatories.

MR. LEWIS: I was assuming you were going to do it yourself.

THE COURT: I ought to have done it. I generally do it. How do you want to handle it?

I think he is entitled to it. I wish I had remembered to do it then because normally I send a typed written interrogatory that asks them that question. I can have it done.

MR. LEWIS: I don't know. I just bring it up. I didn't know why.

THE COURT: I forgot to do it. That is why I didn't do it. I think you are entitled to it.

Mr. McDonald, Mr. Robinson?

MR. McDONALD: No, sir, we disagree strongly.

THE COURT: I had no doubt about that.

MR. LEWIS: Your Honor, I would suggest this and I think it would be the easiest way to do it. That when, if and when the verdict comes, if there is a verdict, that you will send in at that time with the Marshal interrogatory number three, it says, "If you have found a verdict against Columbia Outdoor Advertising on unfair trade practices, was that violation willful, yes or no?"

THE COURT: During when the verdict is announced as opposed to now?

MR. LEWIS: Yes.

THE COURT: I know you are opposed to the idea completely

MR. McDONALD: Let me tell you why.

THE COURT: I have no doubt you will articulate for me a very cogent reason. My view of the evidence is such that I tell you I think he is entitled to it.

MR. McDONALD: May I put my reason on the record?

THE COURT: Yes.

MR. McDONALD: Your Honor, as I understand it, it was charged you couldn't have a violation of the Unfair Trade Practices Act based on mere negligence. I don't think you can have a violation of the Unfair Labor Practices Trade Act unless it is willful. I don't think anything less then willful will support a violation.

THE COURT: If that is your view, then there would be an automatic trebling.

MR. LEWIS: We accept that.

MR. McDONALD: We think in essence you said you can't do it any other way.

MR. LEWIS: We accept that.

THE COURT: The Court considers that is the position of the parties and will act accordingly in the event of a verdict for the Plaintiff on that issue.

THE COURT: Please ask the foreman to join us.

MR. McDONALD: Your Honor, just a moment.

THE COURT: Ask the foreman to wait just a moment, please.

MR. McDONALD: We think the decision is for the Court on willfulness.

THE COURT: That is what the statute says.

MR. McDONALD: Not for the jury.

THE COURT: Of course, if the jury finds the absence of negligence—He is right, the statute says it is for the Court.

MR. McDONALD: I want to clear up any inconsistency.

THE COURT: I mentioned to you I normally send such an interrogatory. The response to it is advisory. The finding is still one that has to be made by the Court.

MR. McDONALD: If all you are seeking is an advisory opinion, then we withdraw the objection.

MR. LEWIS: Your Honor, he said that would be willful, we understand it is up to you. With that in mind, we don't think it should be any more confusing now. We accept Mr. McDonald's understanding.

MR. McDONALD: We don't accept any automatic treble damages.

MR. LEWIS: He accepts when it comes out it is willful.

MR. McDONALD: I do not accept if it comes out it is willful. That was a misstatement. What I meant to say—As they say I misspoke. What I meant to say was I didn't think it was for the jury to say it was willful.

It is for you to determine after they bring out a verdict against us on that count whether or not it was willful and, therefore, entitles them to treble damages.

MR. LEWIS: That is fine, your Honor. But he did say he accepted it as willful.

THE COURT: He did it and he says now he misspoke.

MR. McDONALD: Your Honor, consistency is the hobgobblin of small minds.

THE COURT: Now, ask the foreman to join us, please.

(Within the presence of the Foreman).

THE COURT: Mr. Foreman, I will have the clerk give you the verdict form and the exhibits, but there is so many of them I will ask the marshal and others to help you carry the voluminous exhibits into the room. It is now nearly 4:00.

I will tell you what, Mr. Foreman, send me out a note, please about quarter after five and tell me whether or not you want to go to dinner or whether you want to recess for the evening and come back tomorrow morning.

Have you got pencils and paper, Mr. Foreman?

THE FOREMAN: No, sir,

THE COURT: I will ask the clerk to bring you in a pad, paper and pencil.

Please ask Ms. Galliher, the alternate juror, to join us.

(The alternate juror was excused.)

THE COURT: Are there any exceptions now to anything that has transpired other than your exceptions that you otherwise stated for the Plaintiff?

MR. LEWIS: No, sir.

THE COURT: For Columbia Outdoor Advertising?

MR. McDONALD: No, your Honor.

THE COURT: For City of Columbia?

MR. MEGGS: No, your Honor.

THE COURT: The case was very well tried, may the best party win. The long wait now begins.

(Jury begins deliberations at 3:55 p.m.).

(Within the presence of the jury at 5:20 p.m.).

THE COURT: Mr. Foreman, ladies and gentlemen, I got your note. You have announced your decision to retire for the day and return tomorrow morning. Certainly I am happy to accommodate your request. What time do you want to start in the morning? I don't suppose you gave that a thought.

THE FOREMAN: 9:30.

THE COURT: All right, fine. You are hereby excused until tomorrow morning at the designated time. During your absence, may I again emphasize the importance of your not discussing this case. Do not permit it to be discussed with you or in your presence. You will note that I state that. I take great care to state that to you every day. I said it somewhat earlier today that I know you regard that kind of as * * *

* * * *

EXCERPTS FROM JURY'S ANSWERS TO SPECIAL INTERROGATORIES [PAGES C.A. APP. 2502-2504]

* * * *

THE CLERK: May it please the Court, civil action 82-72 Omni Outdoor Advertising, Inc., versus Columbia Outdoor Advertising, Inc. and the City of Columbia.

Special Interrogatories: Count 1, conspiracy and restraint of trade. Do you find that the Defendants, Columbia Outdoor Advertising, Inc., and the City of Columbia conspired in restraint of trade against the Plaintiff, Omni Outdoor Advertising, Inc? Answer: Yes.

Count 2, monopolization, attempt to monopolize, conspiracy to monopolize, do you find that the Defendants, Columbia Outdoor Advertising Inc., and the City of Columbia conspired against the Plaintiff, Omni Outdoor Advertising Inc., to monopolize the outdoor advertising market in Richland and Lexington Counties? Answer: Yes.

Signed, Willy C. Carter, Jr., Foreman, January 31, 1986.

The Verdict: Count 1, conspiracy and restraint of trade. We the jury unanimously find for the Plaintiff, Omni Outdoor Advertising, Inc., against Defendant, Columbia Outdoor Advertising, Inc., the sum of $600,000 actual damages this 31st day of January, 1986.

Signed, Willy C. Carter, Jr., Foreman.

Verdict: Count 1, conspiracy and restraint of trade. We the jury unanimously find for the Plaintiff, Omni Outdoor Advertising, Inc., against the Defendant, City of Columbia this 31st day of January, 1986.

Signed, Willy C. Carter, Jr., Foreman.

Verdict: Count 2, monopolization or attempt to monopolize or conspiracy to monopolize. We the jury unanimously find for the Plaintiff, Omni Outdoor Advertising, Inc., against Defendant, Columbia Outdoor Advertising, Inc., the sum of $400,000 actual damages this 31st day of January, 1986,

Signed, Willy C. Carter, Jr., Foreman.

Verdict: Count 2, monopolization or attempt to monopolize or conspiracy to monopolize. We the jury unanimously find for the Plaintiff, Omni Outdoor Advertising, Inc. against the Defendant, City of Columbia this 31st day of January, 1986.

Signed, Willy C. Carter, Jr., Foreman.

Verdict: Count 8, unfair trade practices. We the jury unanimously find for the Plaintiff, Omni Outdoor Advertising, Inc., against Defendant, Columbia Outdoor Advertising, Inc., the sum of $11,000 actual damages this 31st day of January, 1986.

Signed, Willy C. Carter, Jr., Foreman.

Ladies and gentlemen of the jury, if this is your verdict, so say all of you?

(The jury responded in the affirmative).

* * * *

EXHIBIT 15—1982 ORDINANCE REFERENCED IN 7/21/82 LETTER
[PAGES C.A. APP. 2649]

ORDINANCE

Amending 1979 Code of Ordinances of the City of Columbia, Part 2, Chapter 2, Article E, Division X, Section 2-2104, Off Premises Commercial Advertising

BE IT ORDERED by the City Council of the City of Columbia, South Carolina, this _____ day of _____, 1982, that Part 2, Chapter 2, Article E, Division X, Section 2-2104, of the 1979 Code of Ordinances of the City of Columbia be amended to read as follows:

Section 2-2104 Off Premises Commercial Advertising

It shall be unlawful hereafter for any person to erect within the City of Columbia any billboard or sign for off-premises commercial advertising.

This ordinance shall become effective _____.

Requested by:

_____

_____
MAYOR

Approved by:

_____
City Manager

ATTEST:

Approved as to form:

_____
City Attorney

_____
City Clerk

Introduced _____

Final Reading _____

EXHIBIT 17—ORDER OF JUDGE CURETON (JULY, 1982) FINDING ORDINANCE 82-12 UNCONSTITUTIONAL [PAGES C.A. APP. 2658-2663]

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Civil Action No. 82-CP-40-1414

OMNI OUTDOOR ADVERTISING, INC.,
Petitioner,

-vs-

CITY OF COLUMBIA,
Respondent.

ORDER

This matter came before me on June 22, 1982, for a hearing on a Rule to Show Cause why a new billboard ordinance enacted by the City of Columbia should not be declared unconstitutional on its face and why an injunction should not be issued against the City of Columbia prohibiting it from interfering with the construction of outdoor advertising signs by Petitioner on twelve sites for which permits for construction of outdoor signs have already been obtained by Petitioner from the City.

The Petitioner contends that the ordinance is unconstitutional because it contains no standards governing its enforcement and is arbitrary in nature.

The following facts were stipulated or established by testimony and exhibits:

(1) On March 24, 1982, City Council for the City of Columbia adopted Ordinance number 82-12 (codified as Section 2-2104 of the City Code) as follows:

> It shall be unlawful for any person to erect within the City of Columbia any billboard or sign for off-premises commercial advertising without first obtaining an erection permit from the Building Official which may be issued only upon the approval of the location, size and compatibility with public safety by City Council after a public hearing.

(2) Prior to March 24, 1982, Petitioner had obtained permits from the City for the erection of outdoor advertising signs ("billboards") at twenty-seven site locations within the City.

(3) On March 24, 1982, and March 26, 1982, E. C. Hornsby, Superintendent of Inspections for the City of Columbia, notified the Petitioner in writing that it should not pursue further erection of signs on property in twelve locations until the new ordinance was complied with. The twelve locations were as follows: 1921 Taylor Street, 1727 Sumter Street, 1819 Laurel Street, 910 Huger Street, 801 Harden Street, 600 Gervais Street, 520 Huger Street, 701 Gervais Street, 1040 Gervais Street, 1800 Block Harden Street (West Side), 5006 North Main Street and 3617 North Main Street.

(4) The site locations for Petitioner signs located at 2006 Gervais Street, 2327 Academy Street and 3401 Farrow Road, not listed in Mr. Hornsby's letter, are not affected by these proceedings since construction had commenced upon them, and the City took no action to prohibit erection of the signs for which permits had been issued. In addition, the City did not attempt to apply the ordinance to twelve additional site locations not listed in Mr. Hornsby's letter because the City did not notify

Petitioner that it may not begin construction on those locations.

(5) Petitioner has expended substantial resources in terms of both personnel and funds (approximately between $6,000 and $18,000 per site location) with regard to the acquisition of the twelve site locations affected by the ordinance prior to and subsequent to the issuance of permits by the City for such locations. In addition, Petitioner has expended approximately $300,000 in conducting market surveys for all of its site locations in the City of Columbia market area, of which approximately 10% is allocated to the twelve affected site locations. Although Petitioner contacted for certain services with respect to these locations prior to the issuance of permits by the City, Petitioner paid concessions for leasing such locations only after it was issued permits therefor.

(6) The twelve affected site locations are priority sites for Petitioner because they provide a balance in the market place between county and city advertising exposure.

(7) The regulation of billboards, in general, is a permissible use of a municipality's police power because it relates to public safety. The ordinance adopted by the City of Columbia does not relate to public health.

I have made the following conclusions of Law:

It is a fundamental tenet of constitutional law that a municipal ordinance is unconstitutional on its face and void if it restricts the right that a person might otherwise exercise over his property without reference to any general or uniform rule, leaving such right to the despotic will of the municipal authorities. This rule of law was firmly established with respect to billboard ordinances by the Supreme Court of South Carolina over 43 years ago in *Schloss Poster Advertising Company, Inc. vs. City of Rock Hill, et al.*, 190 S.C. 92, 2 S.E. 2d 392 (1939). The law established in *Schloss* is dispositive of the constitutional issue in the instant case.

In *Schloss*, the Appellant had been unsuccessful in attempting to obtain a declaration of the invalidity of the following ordinance of the City of Rock Hill:

> "Hereafter it shall be unlawful to erect or maintain any billboard facing on any public street or other public place within the incorporate limits of the City of Rock Hill without having first obtained from the City Council a permit to do so."
> (2 S.E. 2d at 393)

The Appellant was a non-resident corporation with its principal place of business in Charlotte, North Carolina and was engaged mainly in the business of posting and displaying advertisements on billboards. The Special Referee found that the ordinance was invalid and unreasonable on its face, and further found that the City Council had been guilty of discrimination in its enforcement because the Council had given permission to erect billboards to one S. T. Frew, the health officer of the City of Rock Hill, who operated a company entitled Rock Hill Poster and Advertising Company. Upon appeal from the Special Referee, the Circuit Court however declared the ordinance to be valid, and further declared that no constitutional right of the Appellant had been violated.

Testimony for the City tended to show that the Rock Hill City Council evaluated the following grounds in dealing with applications for billboards:

1) Aesthetic considerations.

2) Trash and debris that would collect behind the signs.

3) The danger occasioned by the signs.

4) There were already some number of signs present in the areas where further erection was sought.

The South Carolina Supreme Court unanimously reversed the Circuit Court and held the ordinance unconstitutional on its face. It wrote:

"It seems to us clear upon authority and reason that if an ordinance is passed by a municipal corporation, which upon its face restricts the right or dominion which the individual might otherwise exercise over his property without question, not according to any general or uniform rule, but so as to make the due enjoyment of his own depend upon the arbitrary will of the governing authorities of the town or city, it is unconstitutional and void, because it fails to furnish the uniform rule of action and leaves the right of property subject to the despotic will of city authorities who may exercise it so as to give exclusive profits or privileges to particular persons.

* * * *

The ordinance before us is in no sense a zoning ordinance . . ., nor does it prescribe rules or conditions for the issuance of permits for the erection of billboards to which all persons similarly situated may conform. It does not profess to prescribe regulations for their locations, construction, or maintenance, but it commits to the unrestrained will of the city authorities, for any reason deemed satisfactory to them, the right and power to absolutely prohibit the use of property for the erection of billboards.

The ordinance in question in no way controls or guides the discretion vested thereby in the Respondents. It prescribes no uniform rule upon which the special permission of the city is to be granted. Thus the city is clothed with the uncontrolled power to capriciously grant the privilege to some and deny it to others; to refuse the application of one landowner or lessee and to grant that of another, when for all material purposes, two are applying for precisely the same privileges under the same circumstances. The danger of such an ordinance is that it makes possible arbitrary discriminations and abuses in its execution, depending upon no conditions or qualifications

whatever other than the unregulated arbitrary will of the city authorities as the touchstone by which its validity is to be tested. Fundamental rights under our government do not depend for their existence upon such a slender and uncertain thread. Ordinances which thus invest a city council with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, are unreasonable and invalid. The ordinance should have established a role by which its impartial enforcement could be secured. All of the authorities cited above sustain this conclusion.

The particular question in this case is whether or not the ordinance in question is a valid exercise of police power. Language better calculated to enable the city council to absolutely control the location, erection and maintenance of structures for outdoor advertising, without any reference to known rules and regulations with which all might comply if such existed, cannot well be imagined."

(2 S.E. 2d at 294-395)

The City of Columbia is in precisely the same situation as was the City of Rock Hill. That City's billboard ordinance was declared unconstitutional because it contained no standards governing the conduct of the City Council and therefore Rock Hill was ordered to permit the erection of the signs of Schloss Poster Advertising Company. The ordinance here in question also contains absolutely no standards whatsoever governing actions of the City Council of Columbia in approving the "location, size and compatibility with public safety" of off-premises commercial advertising billboards or signs. The ordinance instead vests in the City Council absolute discretion to determine what standards govern the proper location and proper size of billboards, and what standards are to be used to determine whether a billboard is compatible with the public safety.

In short, the ordinance in question commits to the arbitrary will of the City Council of Columbia, for any reason deemed satisfactory to its members, the right and power to grant or deny applications for outdoor advertising signs. As the *Schloss* case so eloquently points out, such unregulated discretion is simply improper under both the state and federal Constitutions.

The presumption that the City Council will not act arbitrarily and will exercise sound judgment and act in good faith cannot sustain an unconstitutional ordinance. Therefore, even if the City Council were to act according to entirely proper and adequate standards internally, the ordinance on its face is still void. *The ordinance* itself must contain proper standards to govern the conduct of the City Council or other bodies vested with the right to approve or deny applications for the construction of outdoor advertising signs, regardless of the actual or anticipated internal conduct of the Council. *See South Carolina State Highway Department v. Harbin* —— S.C. ——, 86 S.E. 2d 466, 471 (1955) ("When courts are considering the constitutionality of an act, they should take into consideration the things which the act affirmatively permits, and not what actions an administrative officer may or may not take. . . . The presumption that an officer will not act arbitrarily but will exercise sound judgment and good faith cannot sustain a delegation of unregulated discretion.")

Other cases confirming the same principal are legion both nationally and in South Carolina. See, *e.g.*, *City of Florence vs. George*, —— S.C. ——, 127 S.E. 2d 210 (1962), *City of Darlington vs. Stanley*, —— S.C. ——, 122 S.E. 2d 207 (1961), *Henderson vs. City of Greenwood*, 172 S.C. 16, 172 S.E. 689 (1933), *Douglass vs. City Council of Greenville*, 92 S.C. 374 (1912), and *Yick Wo vs. Hopkins*, 118 U.S. 356 (1885).

NOW, THEREFORE, IT IS ORDERED, that Ordinance number 82-12 (codified as Section 2-2104 of the

City Code of Columbia, South Carolina) adopted by the City Council for the City of Columbia on March 24, 1982 is declared unconstitutional under the laws of the State of South Carolina and under the Constitution of the United States and is null and void.

IT IS FURTHER ORDERED, that the City of Columbia, its administrative officials, including without limitation, the Superintendent of Inspections for the City and the City Council of Columbia, are hereby enjoined from preventing in any manner whatsoever Petitioner from erecting and constructing outdoor advertising signs on the following twelve locations: 1921 Taylor Street, 7127 Sumter Street, 1819 Laurel Street, 910 Huger Street, 801 Harden Street, 600 Gervais Street, 520 Huger Street, 701 Gervais Street, 1040 Gervais Street, 1800 Block Harden Street (West Side), 5006 North Main Street and 3617 North Main Street.

IT IS SO ORDERED.

/s/ Jasper M. Cureton
JASPER M. CURETON,
Special Circuit Judge,
Court of Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina

July —, 1982

EXHIBIT 20 EXCERPT—CITY COUNCIL AGENDA
(6/16/82)
[PAGES C.A. APP. 2666]

June 16, 1982

AGENDA

I. PUBLIC Hearing: Proposed Zoning Changes for Rosewood Drive Rezoning.

II. ORDINANCES:

A. First Reading:

1. Ordinance Authorizing Tax Anticipation Note

B. Second Reading:

1. Approval of Budget for Fiscal 1983
2. An Ordinance to Raise Revenue for the City of Columbia, S.C., for the Fiscal Year Ending June 30, 1983
3. Amending Code of Ordinances, Part I, Chapter 2, Article A, Section 1-2001 Salaries of Mayor and Council
4. Encroachment Ordinance—1200 Block Hampton Street
5. Encroachment Ordinance—805-807 Harden Street
6. Amending the Code of Ordinances of the City of Columbia, S.C., Part 6, Chapter 2, Article B, Building Code
7. Amending the Code of Ordinances of the City of Columbia, S.C., Part 6, Chapter 2, Article C, Gas Code
8. Amending the Code of Ordinances of the City of Columbia, S.C., Part 6, Chapter 2,

Official Building Code, Article D, Plumbing Code

9. Amending the Code of Ordinances of the City of Columbia, S.C., Part 6, Chapter 2, Article F, Mechanical Code
10. Amending the Code of Ordinances of the Article G, Housing Code
11. Zoning Amendment Proposals

III. CONSIDERATION of Current Bids:

A. Police Department Computer

B. Aluminum Wire

IV. CONTRACTS:

A. Columbia Urban Lending Project

B. Man-In-Washington

C. Central Midlands Regional Planning Council

D. Richland/Lexington Alcohol and Drug Abuse Council

E. Community Design Center

F. Sunna Energy, Inc.

G. Community Relations Council

H. Engineering Contracts (6)

V. RESOLUTION Establishing Just Compensation for Acquiring Easements and Authorization for Condemnation for the Bay Branch Drainage Project (Amending 8-82-13 Chapman)

VI. ACTION on Economic Development Commission Recommendation.

EXHIBIT 26 EXCERPT—NOTES FROM FINANCIAL REPORT OF ATLANTA OUTDOOR ADVERTISING
[PAGE C.A. APP. 2689]

Kevin Riley

From the desk of
J. WILLIS CANTEY 504-926-1000

11/30/61

Talked to Jerry Moreland, Pres of Lamar

Before Donie Pensacola's income was $80,000. a month. Now it is $160,000. a month

They spent 2½ million in Pensacola

In the storm - I don't know when - they lost 1200 boards

He said to put spacing law into effect 500' apart.

Rebuild Reynolds and B-S showings and we will keep the boxcars.

Raise prices and build singles.

He said Boones leases over all they bought were not excessive

Will be in N.Y. this week - visit next week

EXHIBIT 30 EXCERPT—NOTES FROM NAGLEY
[PAGE C.A. APP. 2698]

593-1900

Called on Nagele in Spartanburg.

Met Ed. Counts, Pres of N. in Spty - Gastonia and Asheville. They just let Greenville interests in, moving to Memphis.

Darrell Morelock is new Pres of Spty. Greenville. Asho. & Gastonia.

Jon Dawson is decent man & good. He rode me around town - Plant is very good.

Richard Peck (use pres) is Accountant -

All offices to help us in any way.

Put in Sign ordinance as soon as passes 1000'.

Raise rates at least 2½ in July.

Jim Fidler - V.P. Sales - Nagele in Greenville - or any R.T.R. Boxcars.

Brown & Williamson man to call is Tom Neille in Louisville Ky. Chairman on this a/c is Wayne Lamm (Spelling?)

They get $1500 per side on one paint unit. They pay Local owner $200 per mo. ft

EXHIBIT 31 EXCERPT—HANDWRITTEN NOTES ON DOONER
[PAGE C.A. APP. 2703]

Talked to Jerry Marchand 4/7/81

He wanted to know how many sq. units Dooner has built.

He said he was setting 30 poles a week on new locations.

Jack Rowe was to have a dialogue with D. But he hasn't.

Agreed to tie our lawyer in with his.

Put in sign ordinance as quick as possible

EXHIBIT 35—MEMO OF CANTEY (11/3/81)
[PAGE C.A. APP. 2709]

PLAINTIFF'S EXHIBIT 35 [illegible]

Canada – 11/3/81

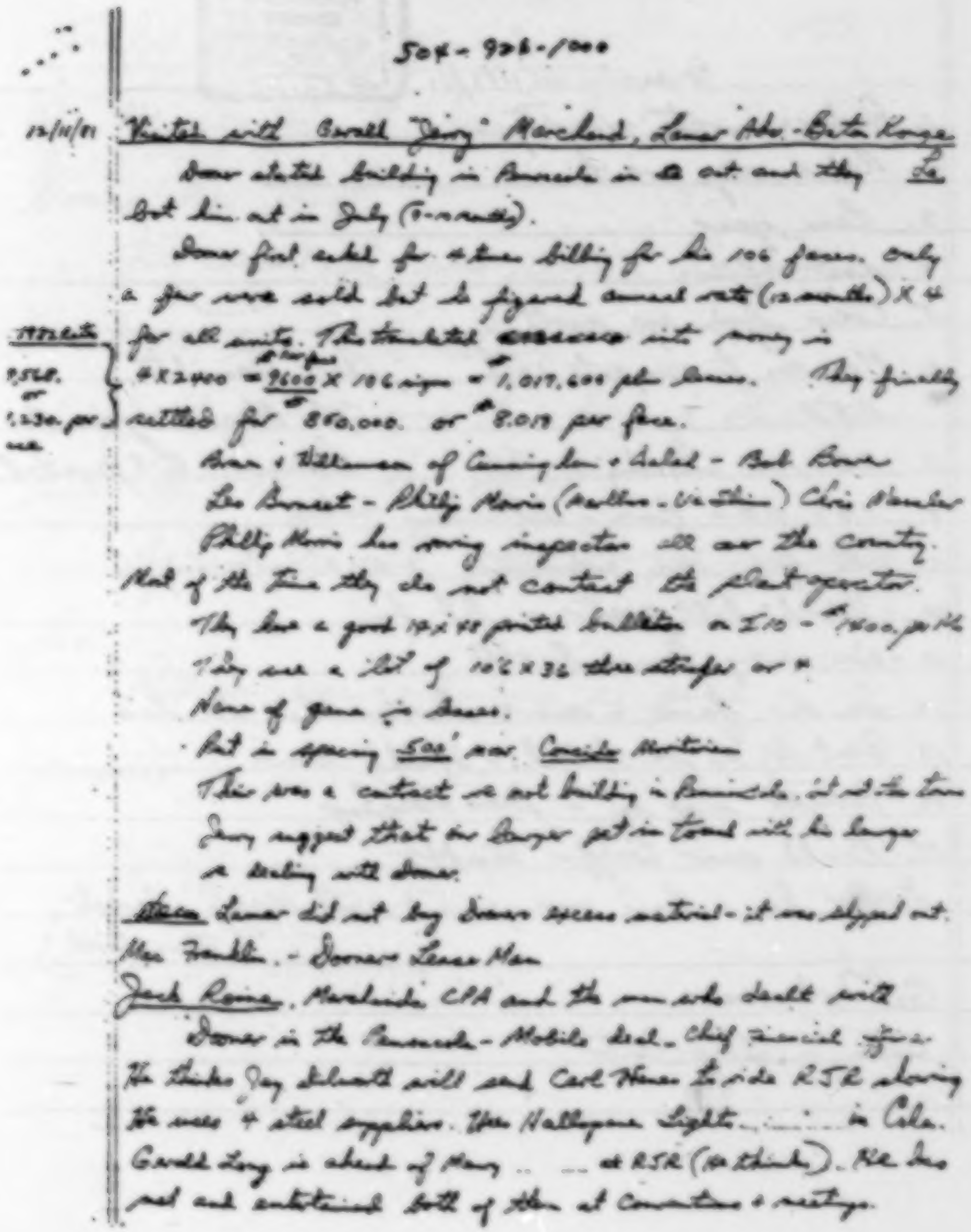
1. Reduce rate on signs
2. Raise sign rents
3. Lose year
4. Rent office
5. Color from up north
6. No way to compete with Bill Hamilton
   RTR. Ft. Hays against
7. 28-foot skiving – RT Lamar – RT postal
8. 14 - 50 – Com – Williams Bobby
9. Get your own ordinance – 500' spacing
10. – Hired bill poster – Bet him
11. – Won every Lamar battle.
12. In our favor – more boards than he has
13. Don't try to re build – Build more
14. Brought sign in – Don Bishop
15. Build near traffic light.

Dooner has a lease arrangement with Magic Market (Mumford)

Get city ordinance

Sign in Shop Center

EXHIBIT 43 EXCERPT—HANDWRITTEN MEMO OF CANTEY (12/11/81) [PAGE C.A. APP. 2722]



504-9[illegible]-1000

12/11/81 Visited with Gerald "Jerry" Marchand, Lamar Adv. - Baton Rouge
Donrey started building in Pensacola in [illegible] and they [illegible]
[illegible] in July (9-10 months).
Donrey first asked for [illegible] billing for his 106 faces. Only a few were sold but he figured annual rate (12 months) X 4 for all units. The [illegible] [illegible] came out
4 X 2400 = 9600 X 106 signs = $1,017,600 plus [illegible]. They finally settled for $850,000. or $8,019 per face.
[illegible] Williamson of Cunningham & [illegible] - Bob [illegible]
Lee [illegible] - Philip Morris (Marlboro - Va Slims) Chris [illegible]
Philip Morris has roving inspectors all over the country.
Most of the time they do not contact the plant operator.
They have a good 14 x 48 painted bulletin on I-10 - $1400 per mo.
They use a lot of 10½ x 36 three stripes or [illegible]
None of [illegible] in Texas.
Put in spacing 500' [illegible] Consider [illegible]
There was a contract [illegible] not building in Pensacola [illegible] at the time
Jerry suggest that our lawyer get in touch with his lawyer on dealing with Donrey.
[illegible] Lamar did not buy Donrey excess material - it was shipped out.
Max Franklin - Donrey Lease Man
Jack Rosina - Marchand's CPA and the man who dealt with Donrey in the Pensacola - Mobile deal - Chief financial officer
He thinks Jay [illegible] will send Carl [illegible] to ride RJR showing the [illegible] & steel suppliers. [illegible] Lights [illegible] in Cola.
Gerald Long is ahead of [illegible] at RJR (he thinks). He has met and entertained both of them at Conventions & meetings.

1982 Rate [illegible] or [illegible] per mo.

EXHIBIT 55 EXCERPT—PICTURE OF CHART/MAP SHOWING LOCATIONS OF OMNI AND COA [PAGE C.A. APP. 2757]

EXHIBIT 58 EXCERPT—COA 1982 RATE CHART [PAGE C.A. APP. 2760]

Columbia, S.C.
Metro Market

Population: 392,000
Richland, Lexington Counties

1982 RATES
EFFECTIVE 7/1/82

PLAINTIFF'S EXHIBIT 58 82-2872

Market	GRP Intensity	Allotment Ill.	Allotment Reg.	Total	Cost Per Month	Avg. Cost Per Panel	TAB E.D.C.	Cost Per T. Per Day
Columbia Metro	200 GRP	39	21	(60)	$9540 00	$159 00	783 24	.4060
	175 GRP	34	20	(53)	8639 00	163 00	693 60	4151
	150 GRP	30	15	(45)	7380 00	164 00	587 43	.4187
	125 GRP	25	12	(38)	6308 00	166 00	498 33	.4219
	100 GRP	20	10	(30)	5010 00	167 00	391 62	.4264
	75 GRP	15	8	(23)	3867 00	169 00	301 98	4290
	50 GRP	10	5	(15)	2580 00	172 00	195 81	.4392
	25 GRP	6	2	(8)	1440 00	178 00	106 71	.4498

Columbia Metro Single Panel Rate:

Illuminated	$300 00
Regular	$250 00

The above are panel costs only. The advertiser agrees to furnish, free of all costs to Columbia Outdoor Advertising, the necessary Posters (including 20% additional posters) to keep the display in first-class condition. In case of failure to furnish sufficient additional posters, no claim for loss of display will be made upon Columbia Outdoor Advertising Company.

Twelve month posting contracts earn a 10% continuity discount — except on single panels.

8 Sheet Posters:

$60 00 per panel — No quantity discount Twelve month posting contracts earn a 10% continuity discount — on 8 panels or more

---

Painted Rotary

Rotation each 90 days. Copy area 14' x 48' (Bleed Face) 672 Sq. Ft. Repaint each 6 months.

12 months $675 00	24 months $650 00	36 months $625 00

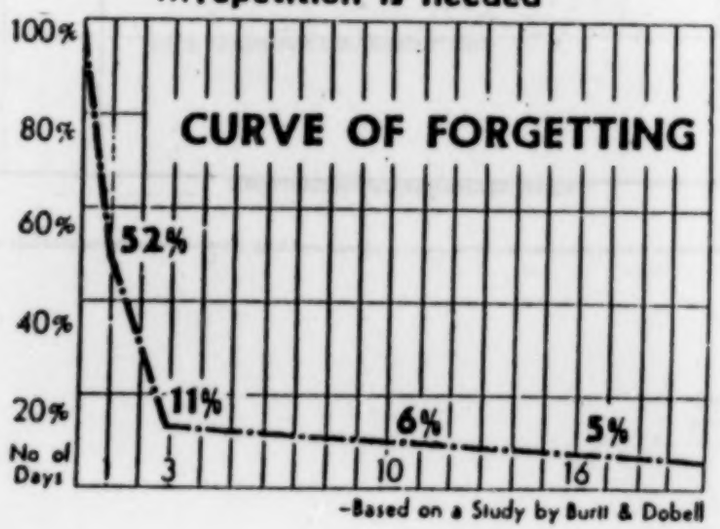
Junior Painted Rotary

12 months $90 00	24 months $80 00	36 months $70 00

Plant Coverage — Other Markets

Aiken, S.C.	100%	8	700.00
	50%	4	472.00
	25%	2	240 00
	Special	1	120 00
Batesburg-Leesville, S.C.	100%	4	472 00
	50%	2	240.00
	Special	1	120 00
Camden, S.C.	100%	4	472 00
	50%	2	240 00
	Special	1	120.00
Edgefield, S.C.	100%	2	240 00
	50%	1	120 00
Johnston, S.C.	100%	2	240 00
	50%	1	120 00
Saluda, S.C.	100%	2	240 00
	50%	1	120 00

Because memories are short
...repetition is needed



-Based on a Study by Burll & Dobell

EXHIBITS—COA INVOICES
[PAGES C.A. APP. 2821, 2824-2829, 2855-2857, 2858-2859]

COLUMBIA OUTDOOR ADVERTISING, *Inc.*

2001 HARPER ST. – P. O. BOX 4215 – PHONE 256-2462
COLUMBIA, SOUTH CAROLINA 29240

PLAINTIFF'S EXHIBIT 82-2972

RECEIVED FROM: Mr. Paul Z. Bennett, Campaign Fund
2604 Devine Street
Columbia, SC 29205

ORDER NO.

DATE: February 15, 1983

DISPLAY BEGINS

DISPLAY ENDS

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
5	30 sheet posters - PAUL Z BENNETT		$195 00
	S. C. Sales Tax		7 80
	Shipping Charges		11 35
			$214 15
5	Posters - PAUL Z. BENNETT (Space)		$420 85
			$635 00

Thanks Paul

PLEASE RETURN PINK COPY W/REMITTANCE

COLUMBIA OUTDOOR ADVERTISING, *Inc.*

2001 HARPER ST. – P. O. BOX 4215 – PHONE 256-2462
COLUMBIA, SOUTH CAROLINA 29240

RECEIVED FROM: Leo Burnett USA
Accounting Dept., Section B
Prudential Plaza
Chicago, Illinois 60601

ORDER NO. SCCOLU 01-08

DATE: March 17, 1981

DISPLAY BEGINS: March 25, 1981

DISPLAY ENDS: April 25, 1981

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
30	Posters - PHILIP MORRIS		$3,780 00
	Less 16 2/3%		-630 01
			$3,149 99
	Merit - New Menthol Ultra Lights		
	Virginia Slims - Red Candy		
	Location List Attached.		

PLEASE RETURN PINK COPY W/REMITTANCE

COLUMBIA OUTDOOR ADVERTISING, Inc.

2001 HARPER ST. – P. O. BOX 4215 – PHONE 256-2462
COLUMBIA, SOUTH CAROLINA 29240

RECEIVED FROM: Tele Job, Inc.
#9 Brookside Drive
Westport, Conn 06880

ORDER NO. 2-349
DATE April 7, 1981

DISPLAY BEGINS April 1, 1981 DISPLAY ENDS May 1, 1981

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
9	Posters - HORSE SHOE - RICHWAY		$1,350 00
	Less 16 2/3%		-225 00
			$1,125 00
	Locations: I-126 & Rapids, #1, US #1 N. & Boyd, #3 Two Notch & Roof, #4 Forest Drive & Graham, #3 US #76 & Patterson, #4 2400 Gervais, #2 333 Gervais, #2 Tri-City & Jenkins, #2 Jct. Knox Abbott & #21 S., #2		

PLEASE RETURN PINK COPY W/REMITTANCE

COLUMBIA OUTDOOR ADVERTISING, Inc.
2615 READ STREET — P. O. BOX 4215 — PHONE 256-3452
COLUMBIA, S. C. 29240

Date March 17, 19

Poster Advertising MERIT & VIRGINIA SLIMS Order No. SCCOLU 01
Order Rec'd From Leo Burnett Company, Inc. No. of Panels 30
Date Display Commences March 25, 1981 Date Display Ends April 25, 1981

LOCATION	PANEL NO.	LOCATION	PANEL
MERIT - NEW MERIT ULTRA LIGHTS		VIRGINIA SLIMS - RED CANDY	
Lighted:		Lighted:	
N. Main & Railroad, #1		Piney Grove Rd. & I-26, #2	
US #21 N. & Caldwell, #4		US #1 N. & Drive In, #2	
1531 Legare, #Ind.		3500 Beltline, #2	
Harden N/O Calhoun, #1		US #76 & Petosky, #1	
Green & Railroad, #1		Millwood & Trec, #1	
Blossom & Harden, #1		2400 Gervais, #2	
Assembly & BallPark, #2		Devine & Huger, #1	
Gervais & Gist, #1		Airport Rd. & I-26, #1	
US #378 & Sport Shop, #4		US #21 S. & Kaiser, #1	
Jct. US #1 & US #21 S. (Roos), #2		Platt Springs Rd. & Sox, #2	
Regular:		Regular:	
Bush River & 7 Oaks, #Ind.		River Drive & Hill, #1	
Sumter Hwy & Trotter Rd., #1		Broad River & Railroad, #1	
#76 & Patterson, #3		Farrow Rd. & Bendale, #2	
US #1 S. & Lesley, #3		SC #277 & Maurice, #1	
US #1 S. & Clark, #2		Forest Drive & Ft. Jackson, #2	

COLUMBIA OUTDOOR ADVERTISING, Inc.

2001 HAMPER ST. – P. O. BOX 4218 – PHONE 256-2662
COLUMBIA, SOUTH CAROLINA 29240

RECEIVED FROM PKG/Cunningham & Walsh, Inc.
875 N. Michigan Avenue
Chicago, Illinois 606011

ORDER NO. CP-81-174
DATE April 7, 1981

DISPLAY BEGINS April 1, 1981 DISPLAY ENDS May 1, 1981

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
23	Posters - RALEIGH " Raleigh Lights"		2,925 00
	Less 16 2/3%		-487 51
			2,437 49

Location Also Appreciated. Thanks to You!

PLEASE RETURN PINK COPY W/REMITTANCE

OFFICIAL LIST OF LOCATIONS FROM

COLUMBIA OUTDOOR ADVERTISING, Inc.

2515 ROAD STREET — P. O. BOX 4215 — PHONE 256-2662
COLUMBIA, S. C. 29240

Date April 7, 19 81

For Advertising RALEIGH Order No. CP-81-174

Forwarded From PKG/Cunningham & Walsh, Inc. No. of Panels 23

Display Commences April 1, 1981 Date Display Ends May 1, 1981

LOCATION	PANEL NO.	LOCATION	PANEL NO.
ghted:			
ead River & Lyles, #1	8213		
#1 N. & Boyd #1			
[redacted]	8205		
...Inc & Covenant, #1			
#1 N. & Plant, #Ind.			
...tor Hwy 3 Square D., #2			
rt Rd. & Bulletin, #3			
...e Millwood, #2			
...0 Gervais, #2			
...mbly & Hampton, #2			
...luda & Devine, #2			
...rvais & Huger, #Ind.			
#375 & Hospital, #1			
#21 S. & Seneca, #2			
... Calhoun #2			
...ular:			
... River Drive, #2			
#21 A/O I-26, #2			
#1 N. & Rostick, #Ind.			
... & Whaley, #2			
...p Read & Gifford, #2			
...r & Whaley, #1			
... S. & Shull, #1			
#321 S. A/P Truck Stop, #Ind.			

COLUMBIA OUTDOOR ADVERTISING, Inc.

2001 HARPER ST. – P. O. BOX 4218 – PHONE 758-2482
COLUMBIA, SOUTH CAROLINA 29240

RECEIVED FROM: Midland Trane
409 Piney Woods
Columbia, SC 29210

ORDER NO.
DATE: April 21, 1981

DISPLAY BEGINS: April 15, 1981 DISPLAY ENDS: May 15, 1981

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
10	Posters - MIDLAND TRANE OF COLUMBIA		1,100 00
	Locations: Broad River @ St. Andrews, #1 Broad River @ Lyles, #2 2430 Main, #1 277 @ Maurice, #2 US #1N @ Spring Valley, #1 Two Notch @ Alpine Villa, #1 Southland Mall @ Square D., #1 Millwood @ Kind, #2 US #1 S. @ Head On, #1 US #378 @ Cuaghman, #Ind.		

PLEASE RETURN PINK COPY W/REMITTANCE

COLUMBIA OUTDOO

2001 HARPER ST. – P. O
COLUMBIA, SOU

PLAINTIFF'S EXHIBIT 88 82-2572

RECEIVED FROM: RJR Media Services
P. O. Box 2757
Winston-Salem, NC 27102

ORDER NO. R-82056655
DATE: May 10, 1982

DISPLAY BEGINS: May 5, 1982 DISPLAY ENDS: June 5, 1982

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
30	Posters - RJR TOBACCO COMPANY		$4,101 30
	Less 16 2/3%		-683 56
			$3,417 74
	Location List Attached Winston - Three Hot Tips, Helmet Two Hot Tips Salem - Couple Girl with Hat		

PLEASE RETURN PINK COPY W/REMITTANCE

OFFICIAL LIST OF LOCATIONS FROM

COLUMBIA OUTDOOR ADVERTISING, Inc.

2815 READ STREET — P. O. BOX 4213 — PHONE 256-1163
COLUMBIA, S. C. 29240

Date May 10, 19 82

Paper Advertising RJR TOBACCO COMPANY Order No.

Order Rec'd from Winston & Salem No. of Panels 30

Date Display Commences May 5, 1982 Date Display Ends June 5, 1982

LOCATION	PANEL NO.	LOCATION	PANEL NO.
WINSTON - THREE MEN TIPPED HELMET TWO MEN GIRDERS		SALEM : COUPLE GIRL WITH HAT	
LIGHTED:		LIGHTED:	
Elmwood) Park, #2		Broad River) River Dr., #In.	
Bush River Rd.) Millis, #1		Bush River) Allied, #2	
2400 Main, #1		321 N.) Shopping Ctr., #1	
Ironhuin & Reed, #2		Parklane & [illegible], #2	
US #1 N.) Alpine, #1		#277 & [illegible], #1	
US #1 N. @ Railroad, #2		Two Notch & Covenant, #2	
2008 Taylor, #2		Taylor & Bull, #Ind.	
Broad River) Meetze Rd., #		Millwood & Rocks, #Ind.	
US #21 S. & Frink, #2		Assembly & Church, #1	
SC #215 & SLFP #1		333 Gervais, #1	
REGULAR:		REGULAR:	
Farrow Rd.) Beltline, #1		Bluff Rd.) Stadium, #1	
Sumter Hwy) Townsend, #1		Kilgore & Par-on, #1	
Rosewood) Railroad, #Ind.		US #21 S. @ City Limber, #1	
230 Huger, #1		US #378 & Colu[illegible], #1	
#378 & Lott, #1		[illegible]	

COLUMBIA OUTDOOR ADVERTISING, Inc.

2001 HARPER ST. – P. O. BOX 4213 – PHONE 256-1162
COLUMBIA, SOUTH CAROLINA 29240

RECEIVED FROM Mr. Lloyd Hendricks

P. O. Box 728

Columbia, SC 29202

ORDER NO.

DATE April 29, 1982

DISPLAY BEGINS May 5, 1982 DISPLAY ENDS June 5, 1982

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
3	Posters : LLOYD HENDRICKS POLITICAL		$775 00

Thank You!

PLEASE RETURN PINK COPY W/REMITTANCE

Lloyd Hudecks

\#1200 ==

1. US # 110 Dentsville # 2
2. Bull at Harden # 2
3. [illegible]
4. [illegible]
5. Pullman Kilbourne # 2
6. Elk Hospital Hill Rd
7. [illegible]

Bull at Harden # 2 ... Bricklyard

Bull on Cal. [illegible] for 1st

Bill him 1200^{00} on Sept 1st 82

SUMMARY RECORD & PANEL CIRCULATION

73

Plant Name ______ Market ______ State ______

Listing # 63 Station Location Bull at Harden ST County ______ Total Number Traffic Lanes: ______ One Way: Yes ___ No ___

Hand Count: Counting Times: AM ______ to ______ Date ______ If Machine Count: Date ______

PM ______ to ______ Weather ______ Source: State ___ City ___ Other ___

TYPE OF COUNT	RECORDED COUNT	CIRC. FACTOR	24 HOUR EFFECT. CIRC.	CIRC. FACTOR	12 HOUR EFFECT. CIRC.
Machine Count	24 Hrs. 19.6	.875	17.2	0.58*	
Hand Count:	AM				
Auto-Truck	PM / Total	13.5*		9.5*	
Pedestrian	AM / PM / Total	9		.6	
IF ONE WAY—double factor.		Grand Total			

POSTER ✓

BULLETIN:

ROTATING ______ PERMANENT ______

PANEL LOCATION DESCRIPTION	Panel No.	Faces N-E-S-W	Effective Circulation 24 Hr.	Effective Circulation 12 Hr.	Primary Code	Primary Value	Secondary Code	Secondary Value
Bull at Harden	1	S	17.2		1AS	10		
			2859					
TOTALS TOTAL UNIL			XXXXX					
TOTALS TOTAL ILL	1	XX	17.2	XXXXX	XXX	10	XX	XXX

Primary exposure is the one with highest effective circulation

EXHIBITS 117-120 EXCERPTS—1982, 1981, 1980 & 1983 TAX RETURNS FOR COA
[PAGES C.A. APP. 3010, 3034, 3065, 3092]

INCOME TAX SCHEDULE

COLUMBIA OUTDOOR ADVERTISING, INC. (57-0267855)
COLUMBIA, SOUTH CAROLINA

December 31, 1982

CONTRIBUTIONS

League of Women Voters	$ 35.00
University of S. C.	250.00
Carolina Childrens Home	15.00
N.S.R.P. S.C. Affiliate	100.00
Heart Assn.	100.00
United Fund	2,075.00
Rotary Foundation and Rotary Clubs	50.00
Indian Water Courses	50.00
City of Columbia	26,100.00
Baptist Church	15.00
Miscellaneous	1.00
	28,791.00
10% Contribution Limitation	(23,640.32)
CONTRIBUTION CARRYOVER TO DECEMBER 31, 1983	$ 5,150.68

INCOME TAX SCHEDULE

COLUMBIA OUTDOOR ADVERTISING, INC. (57-0267855)
COLUMBIA, SOUTH CAROLINA

December 31, 1981

CONTRIBUTIONS

League of Women Voters	$ 25.00
Junior Achievement	100.00
Carolina Childrens Home	300.00
Junior League	250.00
Heart Assn.	100.00
United Fund	793.25
American Cancer Society	100.00
Rotary Foundation and Rotary Clubs	25.00
Irmo Soccer Assn.	100.00
Indian Water Courses	50.00
Riverbanks Zoo	100.00
Columbia Police Club	50.00
S.C. Chamber Orchestra	50.00
Baptist Church	25.00
	§ 2,068.25

INCOME TAX SCHDEULE

COLUMBIA OUTDOOR ADVERTISING, INC. (57-0267855)
COLUMBIA, SOUTH CAROLINA

December 31, 1980

CONTRIBUTIONS

League of Women Voters	$ 25.00
Columbia N.M.C.A.	75.00
Carolina Childrens Home	250.00
Planned Parenthood	20.00
University of South Carolina	250.00
United Fund	885.00
American Cancer Society	200.00
Rotary Foundation and Rotary Clubs	25.00
Irmo Soccer Assn.	100.00
Indian Water Courses	50.00
Wildwood Stables	25.00
Columbia Police Club	50.00
S.C. Chamber Orchestra	100.00
Palmetto Elks Lodge	60.00
Baptist Church	36.00
	$ 2,151.00

INCOME TAX SCHEDULE

COLUMBIA OUTDOOR ADVERTISING, INC. (57-0267855)
COLUMBIA SOUTH CAROLINA

December 31, 1983

CONTRIBUTIONS

League of Women Voters	$ 25.00
University of S. C.	250.00
Carolina Childrens Home	675.00
S.C. Athletic Hall of Fame	50.00
American Cancer Society	200.00
Junior Achievement Fund	150.00
YMCA	225.00
Ronald McDonald House	100.00
City of Columbia	15,000.00
Baptist Church	20.00
S.C. State Museum	1,000.00
Allen University	200.00
Miscellaneous	350.00
	18,245.00
Contribution Carryover 1983	5,150.68
	23,395.68
10% Contribution Limitation	17,689.24
Contribution Carryover to 12/31/84	$ 5,706.44

EXHIBIT 130 EXCERPT—APPOINTMENT SHEET [PAGE C.A. APP. 3169]

PM 3:30 Iris DeMates
4:00 Ralph Whitehead

SATURDAY

PM 10-4:00 p.m.
Elmwood Park
Tour of Homes

SUNDAY

Unscheduled

MONDAY

PM Unscheduled

PM 4:00 Cain and father-in-law/Jim Norton
5:00 Willis Cantey investiture
Hilton Field
7:00 County Convention

TUESDAY Iris DeMates

AM Unscheduled
12:30 Willis County

PM 7:00 American Legion Reception
National Guard Armory-Bluff Road
7:30 BBQ—same as above —present keys to Mrs. Walter Stolte/ Jack Flynt

WEDNESDAY

[Illegible]
and representatives of downtown churches,
2nd Nazareth Baptist Church
2334 Elmwood Ave
(between Oak & Waverly)
re: Adopt-A-Block
[Illegible]

PM
3:00 Central Midlands Regional Planning Council—conf. rm.—Council offices
5:30

FRIDAY

AM 10:00 WELCOME—31st Southeastern Province Council, Kappa Alpha Psi Fraternity, Inc.
Present key to Melvin T. Solomon, Province Polemarch (President)
James Hardy—contact
Carolina Inn

PM
3:00 [Illegible]

PM 7:15 Red Cross Convention—WELCOME
Carolina Inn—Nat'l Pres.
Geo. Ellsey will be there—Jasper Salmond-contact

SATURDAY

AM 8:00 Council Breakfast
9:30 Council Meeting

PM Unscheduled

AM 9-11:00 Heritage Brunch —Hilton Head
25 Baynard Park Road
must have letter for admittance

SUNDAY

Unscheduled

MONDAY

PM 7:30 Nickelodeon Party—The Lobby—
922 S. Main

EXHIBIT 134—1981-1982 PERMITS [PAGE C.A. APP. 3187]

COA Sign Permits in City of Columbia
12/22/81 to 2/24/84

PLAINTIFF'S EXHIBIT 134 82-2872

12/22/81	1826 Huger St ([illegible])	
	Two Notch & Covenant ([illegible])	
1/14/82	[illegible] ([illegible]) *	
	Sumter Hwy [illegible] ([illegible])	
	1831 Lagree ([illegible]) & Taylor ([illegible])	
1/20	Blossom & Main St ([illegible])	
2/25	[illegible] ([illegible])	# I006333
3/9	US 321 N & [illegible] Plaza Center ([illegible])	# I006577
	1003 [illegible] St – [illegible] ([illegible])	# I006578
	700 [illegible] & Devine ([illegible])	# I006519
3/15	1835 [illegible] & Gregg (COF)	# I006707
	1601 Sumter St & Taylor ([illegible])	# I006708
3/16	183 [illegible] ([illegible])	# I006718
3/18	3325 [illegible] Park Rd ([illegible]) *	# I006751
	2002 [illegible] St ([illegible]) *	# I006752
	7000 [illegible] Ferry Rd ([illegible]) *	# I006793
	4701 [illegible] ([illegible]) *	# I006794
3/19	1707 Two Notch Rd ([illegible])	# I006811
	4775 [illegible] ([illegible])	# I006810
3/23	1657 Columbia College Dr ([illegible]) *	# I006815
10/1	4688 Jackson Blvd. ([illegible])	# J000653
10/8	426 [illegible] St ([illegible]) *	# J000758
10/15	1725 [illegible] ([illegible])	# J000913
12/8	2724 Devine St ([illegible])	# J001283
12/20	2001 Harden St ([illegible])	# J001523
	2700 Devine St ([illegible])	# J001522

EXHIBIT 140—SUBSTITUTE INVOICE OF W. OUZTS [PAGE C.A. APP. 3216]

COLUMBIA OUTDOOR ADVERTISING, Inc.

2001 HARPER ST. – P. O. BOX 4215 – PHONE 256-3462
COLUMBIA, SOUTH CAROLINA 29240

PLAINTIFF'S EXHIBIT 140 ([illegible]) C/A 82-2872

RECEIVED FROM: Mr. William C. Ouzts
1701 Assembly Street
Columbia, SC 29201

ORDER NO.

DATE 2/29/84

DISPLAY BEGINS

DISPLAY ENDS

NO. PANELS	PRODUCT ADVERTISED	RATE	GROSS AMOUNT
[illegible]	[illegible] - RE-ELECT [illegible] Paper SC Sales Tax Shipping Charges		2400 [illegible] [illegible] [illegible] [illegible]
			[illegible]

Thank You!

PAID
Columbia Outdoor Advertising, Inc.

PLEASE RETURN PINK COPY [illegible]

EXHIBIT 146 EXCERPT—CAMPAIGN DISCLOSURE FORM, BENNETT 1983 [PAGE C.A. APP. 3254]

CAMPAIGN DISCLOSURE FORM

PART II

SCHEDULE A
ITEMIZED RECEIPTS

Paul Z. Bennett, CPA
NAME OF CANDIDATE OR COMMITTEE

(Contributions from each individual or group of more than $100)

DATE OF RECEIPT	NAME OF INDIVIDUAL OR GROUP MAKING CONTRIBUTION	AMOUNT OF CONTRIBUTION
2/28/83	Frank Blair	$ 250.00
2/15, 3/8	J. Willis Cantey	140.00
2/2, 3/8	William C. Cantey, M.D.	115.00
2/16	J. Donald Dial	200.00
3/18	W. Russell Drake, Jr.	500.00
1/12,1/3,3/9	James G. Edens	1,000.00
1/27, 3/5	Mr. and Mrs. Alvin S. Holland	300.00
2/10, 3/9	John S. Jordan	200.00
1/31, 3/8	Mr. and Mrs. William C. Outz	350.00
1/22, 3/8	G. T. Powers	130.00
2/17, 3/7	Dr. B. Strother Pope	200.00
1/31, 3/4	Robert L. Selman	150.00
2/16	Harold S. Wrenn	150.00
2/17, 3/10	Paul Z. Bennett Committee to Save Columbia	900.00 142.10
TOTAL (must equal the amount reported in Section 10 E itemized)		$4,933.10

SCHEDULE B
ITEMIZED EXPENDITURES
(listing of all expenditures)

DATE OF PAYMENT	NAME AND ADDRESS OF PAYEE OR CANDIDATE TO WHOM EXPENDITURE WAS MADE	PURPOSE OF EXPENDITURE	AMOUNT
1/28/83	City of Columbia	Filing Fee	$ 90.00
2/2	US Postal Service	Bulk Mailing Permit	40.00
2/3	Elvetex, Box 285, Columbia, 29202	Bumper Stickers	218.40
2/7	SC State Ethics Commission	Labels	66.00
2/11	Jack Owens Photography, 4 Knockton Blvd.	Photographs	32.24
2/17	Columbia Outdoor, P.O. Box 4215, 29240	Billboard Advertising	635.00
2/17	Cox, Bryant & Blair, 3710 Landmark, 29204	Advertising	3,492.92
2/22	US Post Office	Postage for Bulk Mailing	404.31
2/24	G & H Mail Service, 1226 Laurel St. 29201	Preparation for bulk mailing	144.15
2/25	Crowson Stone, 819 Main St. 29201	Posters	374.40
2/28	Curry Copy Center, 1332 Main St. 29201	Printing-bulk mail letter	339.32
3/1	Crowson-Stone, 819 Main St. 29701	Pamphlets	296.40
3/2	Crowson Stone, 819 Main St. 29201	Posters, Pamphlets	335.92
3/8	Star Reporter, Santee St. 29205	Advertising	48.88
3/9	US Post Office	Postage for bulk mailing	449.65
3/10	Cox, Bryant & Blair, 3710 Landmark, 29204	Advertising	1,357.66
3/11	John Durst & Assoc. 1836 W. Buchanan 29204	Hand Cards	120.70
3/14	Curry Copy Center, 1332 Main St., 29201	Printing-bulk Mail letter	323.72
3/14	G & H Mail Service	Preparation of bulk mailing	145.05
3/16	Crowson Stone, 819 Main St., 29201	Posters	228.80
3/17	Cash	Reimburse cash paid to poll workers	150.00
3/22	Paul Z. Bennett Reimburse cash paid for Hand card distribution		145.00
3/22	Paul Z. Bennett " " " "	" " "	200.00
3/22	Paul Z. Bennett " " " "	" " "	60.00
3/22	Paul Z. Bennett For 3/1-Reimburse reception expenses		100.00
3/22	Paul Z. Bennett For 3/15-Reimburse reception expenses		100.00
Feb., Mar.	Bank Service Charges		2.48
TOTAL (must equal the amount reported in Section 11 D)			$9,921.00

Additional pages may be added if necessary.

EXHIBIT 158—PROPOSED ADVERTISING SIGN ORDINANCE [PAGE C.A. APP. 3313]

PROPOSED ADVERTISING SIGN ORDINANCE

The maximum display surface area of a basic advertising sign shall not exceed seven hundred (700) square feet. Extensions of up to two hundred (200) square feet are allowed on an advertising sign, but the maximum display surface area is nine hundred (900) square feet.

Only one (1) side of a double-faced sign shall be considered when computing the square footage of signs. Advertising signs shall have only one (1) sign face in any one (1) direction. There shall be no side-by-side or double decker advertising signs.

No advertising sign shall be erected within the following distances another advertising sign on the same side of the street:

1. C-3, C-4, C-5: 1,000 feet;
2. M-1, M-2: 750 feet.

Advertising signs on one side of the street shall be spaced no closer than 300 feet from that point on the direct opposite side of the same street or highway to any off-premise advertising sign on that side of the street or highway on which the point of measurement is located.

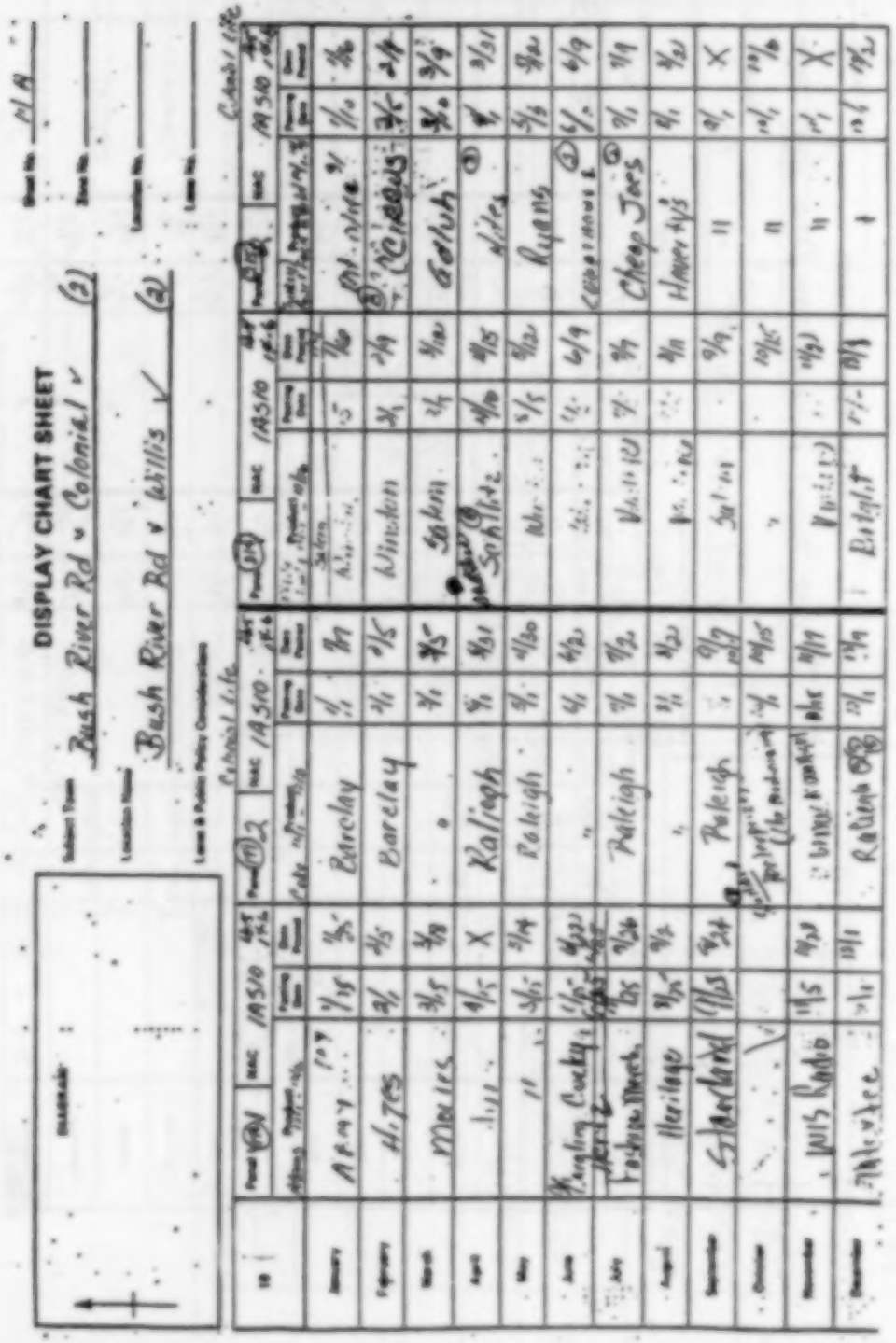
Restricted Area.

Subject area is the center core of the Downtown Business District and is bounded on the east by Bull Street, west by Wayne Street, north by Calhoun Street and south by Devine Street. (See attached map)

At the time of adoption of this ordinance, inventory of advertising signs will be taken. After adoption no additional advertising signs will be permitted in the

subject area. However, in the event that an inventoried advertising sign location is lost through normal attrition, the owner of that sign would be allowed to relocate that sign elsewhere in the Restricted Area provided a legal location could be obtained that would conform to the existing sign ordinance.

EXHIBIT 165 EXCERPTS—1982 CHART BOOK OF COA
[PAGES C.A. APP. 3349, 3353, 3388]



DISPLAY CHART SHEET

Sheet No. 18

Zone No. ______

Location No. ______

Lease No. ______

DIAGRAM

Subject Town: Jct. Broad River v River Drive (1)

Location Name: Broad River v Sunset (1)

Lease & Public Policy Considerations: Ann Decell; Exxon

19	Panel 1	NAC		Panel (316)	NAC 1A510		Panel Ind	NAC 1A510		Panel	NAC	
	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted
January	Wis. Ar[illegible]	1/1	5/20	Drug Abuse	1/20	1/28	Salem	1/5	1/4			
February				Can. Chariots	2/25	2/24	Salem	[illegible]	2/10			
March	WCOS	3/1	3/12	More	3/5	3/6	More / Newport	3/5 / 3/5	3/12 / 3/20			
April				More	4/5	4/6	Sandwich W NOK	4/5	4/10			
May				Salem	5/5	5/5	Merit	5/5	5/4			
June				Salem	6/5	6/9	(8) "	6/5	6/6			
July	down			Merit	7/5	7/6	"	7/5	7/19			
August	3-A-82			Merit	8/5	8/9	"	8/5	8/19			
September				Vantage	9/5	9/9	"	9/5	9/6			
October				"	10/5	10/18	"	10/5	10/19			
November				WSR	11/1	11/29	"	11/5	11/19			
December	[illegible]			Love Cher.	12/1	12/2	"	12/5	12/15			

DISPLAY CHART SHEET

Sheet No. 15a

Zone No. ______

Location No. ______

Lease No. ______

DIAGRAM

Subject Town: Decker v Castle Pinckney (2)

Location Name: ______

Lease & Public Policy Considerations: ______

19	Panel (336)	NAC 1A510		Panel (337)	NAC 1A510		Panel	NAC		Panel	NAC	
	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted	Product	Posting Date	Date Posted
January												
February												
March												
April	Schlitz	4/10	4/18	P[illegible]	4/1	4/18	Switch Raleigh 5-1-81					
May	McDonalds	5/1	5/5	(8) WNOK	5/1	5/7						
June	"	6/1	X	Raleigh (5)	6/1	5/31						
July	Cheap Joes	7/1	6/30	"	7/1	6/30						
August	Calvert Bodie	8/1	8/11	"	8/1	8/9						
September	WISTV	9/10	9/14	Barclay	9/1	8/31						
October	Barber	10/10	10/12	"	10/1	10/5						
November	Mt Olive	11/10	11/10	"	11/1	10/28						
December	[illegible]	12/10	12/13	"	12/1	12/1						

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Case Number: C/A 3:82-2872-0

OMNI OUTDOOR ADVERTISING, INC.

v.

COLUMBIA OUTDOOR ADVERTISING, INC.
AND THE CITY OF COLUMBIA

JUDGMENT IN A CIVIL CASE

[Filed Nov. 18, 1988]

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to hearing before the Court. The defendants' motion for judgment notwithstanding the verdict having been duly heard and granted;

IT IS ORDERED AND ADJUDGED, that the plaintiff take nothing; that this action is dismissed; and that the defendants, Columbia Outdoor Advertising, Inc. and the City of Columbia, recover of the plaintiff, Omni Outdoor Advertising, Inc., their costs of action.

ANN A. BIRCH
Clerk

/s/ Nancy M. Harris
NANCY M. HARRIS
Deputy Clerk

Date: November 18, 1988

PROPOSED ORDINANCE OF MARCH 10, 1982
[PAGE C.A. APP. 3190]

• • • •

A. First Reading:

1. Billboard Construction in the area bounded by Harden Street, the River, Heyward Street and Elmwood Avenue—Rosewood Corridor area

Upon motion by Mr. Adams, seconded by Mr. Barnes, Council voted unanimously that no billboards will be constructed in the area bounded by Harden Street, the River, Heyward Street and Elmwood Avenue or in any area where a rezoning has been or shall be proposed, including the Rosewood Corridor area, without the express prior permission of City Council.

• • • •

TEMPORARY MORATORIUM OF MARCH 24, 1984
[PAGE C.A. APP. 3616]

ORDINANCE

Amending 1979 Code of Ordinances of the City of Columbia, Part 2, Section 2-2104, Off Premises Commercial Advertising.

BE IT ORDAINED by the City Council of the City of Columbia, South Carolina, this 24th day of March, 1982, that Part 2, Chapt. 2, Article E, Division X, Section 2-2104, of the 1979 Code of Ordinances of the City of Columbia be amended as follows:

Section 2-2104. *Off Premises Commercial Advertising.*

It shall be unlawful for any person to erect within the City of Columbia any billboard or sign for off-premises commercial advertising without first obtaining an erection permit from the Building Official which may be issued only upon the approval of the location, size and compatibility with public safety by City Council after a public hearing.

This Ordinance shall become effective immediately, and shall expire 180 days from date.

Requested by:

Approved by:

/s/ Milton E. Hadley
Acting City Manager

/s/ Kirkman Finlay
Mayor

Approved as to Form:

ATTEST:

/s/ Roy D. Bates
City Attorney

/s/ James Cantey
City Clerk

Introduced: March 10, 1982
Final Reading: March 24, 1982

PERMANENT ORDINANCE OF SEPTEMBER 22, 1982
[PAGES C.A. APP. 3778-3779]

ORDINANCE

Amending 1979 Code of Ordinances of Columbia, South Carolina, Part 6, Chapter 3, Article H, Section 6-3106 Signs permitted in commercial and industrial districts, Item (1) and adding Section 6-3109 Advertising signs

BE IT ORDAINED by the City Council of the City of Columbia, South Carolina, this 22nd day of September, 1982, that Part 6, Chapter 3, Article H, Section 6-3106 Signs permitted in commercial and industrial districts, Item (1) is amended to read as follows:

(1) Advertising signs in C-1, C-2, C-4, C-5, and Historic Districts: Advertising signs are prohibited in C-1, C-2, C-4, C-5, and Historic Districts.

BE IT FURTHER ORDAINED that Section 6-3109 Advertising signs is added as follows:

Notwithstanding any other provisions of this Ordinance:

(1) No advertising sign shall be erected or attached to, suspended from or supported on a building or structure, nor shall any existing signs be enlarged, removed, relocated, or substantially repaired (over 50% of its existing value) unless a building permit has been issued by the building inspector and is in compliance with all of the requirements governing advertising signs.

(2) All advertising signs must be in compliance with appropriate detailed provisions of the City of Columbia's building code, including being constructed so as to withstand wind pressures of 30 pounds per square foot (PSF).

(3) The maximum display surface area of an advertising sign shall be:

a. C-3: 700 square feet with 200 square foot extension.

b. M-1, M-2: 700 square feet with 200 square foot extension.

(4) Advertising signs shall have only one sign face in any one direction. There shall be no side-by-side or double-decker advertising signs.

(5) No advertising sign may be erected within the front yard setback.

(6) No advertising sign shall be erected within the following distances of another advertising sign:

a. C-3: 1,000 feet

b. M-1, M-2: 1,000 feet

There shall be no advertising sign on the opposite side of the street for a distance of 500 feet measured from the spot directly opposite from an existing advertising sign.

(7) There shall be no advertising signs mounted on the roof of any structure.

(8) Under no circumstances shall the Board of Adjustment Zoning grant any variance to the sign provision of this ordinance.

(9) Under no circumstances shall the Landmarks Commission permit a sign.

This effective date of this ordinance is September 22, 1982.

Requested by:

Approved by:

/s/ Graydon V. Olive, Jr.
City Manager

/s/ Kirkman Finlay
Mayor

Approved as to form:

ATTEST:

/s/ Roy D. Bates
City Attorney

/s/ James Cantey
City Clerk

Introduced 9/8/82
Final Reading 9/22/82